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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, on this day designated by Congress to be a Day of Reconciliation, we confess anything which stands between us and You and between us and anyone else. We long to be in a right relationship with You again. We know the love, joy, and peace that floods our being when we are reconciled with You. We become riverbeds for the flow of the supernatural gifts of leadership: wisdom, knowledge, discernment, vision, and authentic charisma. We confess our pride that estranges us from You and our judgmentalism that strains our relationships. Forgive our cutting words and hurting attitudes toward other religions or races and people with different beliefs, political preferences, or convictions on issues. So often we are divided into camps of liberal and conservative, Republican and Democrat, and are critical of those with whom we disagree. Help us to express to each other the grace we have received in being reconciled to You. May our efforts to reach out to each other be a way of telling You how much we love You. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 4, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Madam President, this morning the Senate will consider the Transportation conference report under a 60-minute time agreement. A vote on the conference report will occur today. At approximately 10:30, the Senate will resume consideration of the Railroad Retirement Act with the Daschle substitute amendment pending under postcloture conditions. There will be rollcall votes on amendments to the Railroad Retirement Act during today's session.

The Senate will recess from 12:30 to 2:15 p.m. for the weekly party conferences.

On behalf of the majority leader, I have been asked to tell everyone we appreciate the cooperation yesterday. We are moving along on the legislation. There are just a few things left we have to do before we leave for the Christmas break.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the conference report accompanying H.R. 2299, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2299) ''making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2002, and for other purposes,'' having met, have agreed that the House recede from its disagreement to the amendment of the Senate and the House agree to the same, with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD on November 29, 2001.)

The ACTING PRESIDENT pro tempore. Under a previous order, there will now be 60 minutes for debate.

The Senator from Washington.

Mrs. MURRAY. Madam President, I rise to bring before the Senate the conference report accompanying the Transportation appropriations bill for fiscal year 2002.

This conference agreement represents many weeks of negotiations with the House and the administration, and I am proud of the progress it will bring to our Nation's transportation system.

This conference agreement has already passed the House by an overwhelming margin of 371–11.

In total, the bill includes appropriations and obligation limitations totaling roughly $59.6 billion.

While that is about $1.5 billion more than the fiscal year 2001 level, it is approximately $400 million less than the amount passed by the Senate on August 1.

It was very difficult to pare $400 million out of the Senate bill, but we did so while carefully looking out for the needs of all of the critical agencies within the Department of Transportation as well as the Members' individual priorities.

The conference agreement provides funding levels that are equal to or higher than the operating accounts for agencies such as the Coast Guard, the FAA, and the National Highway Traffic Safety Administration.

Several important safety initiatives—that were included in the Senate bill—have been maintained, including: the hiring of new aviation safety and security inspectors, improvements to the Coast Guard's struggling search and rescue mission, and additional funding to increase seat belt use across the nation.

The bill before us also includes a full $1.25 billion in funding to launch the transportation security act, which is the aviation security bill that was enacted just a few days ago.

The act required that the revenues from its user fees be appropriated before becoming available.

The security act includes many strict deadlines for the improvement of our aviation security system.

And we expect the DOT to meet those deadlines.

That is why we worked hard to get the $1.25 billion in user fees into the hands of the Transportation Secretary in this bill as soon as possible—rather than wait for the Defense supplemental.

For highways, our bill includes $100 million more than the amount guaranteed under TEA–21.

The bill also fully funds the levels authorized under AIR–21 for the FAA's air traffic control improvements and airport grants.

When the Senate considered this bill, we spent a lot of time debating the safety of Mexican trucks entering the United States.

While the conference agreement provides the administration flexibility in implementation, it carefully follows the safety provisions of the bill that passed the Senate in August.

The safety requirements in this bill are considerably stronger than anything the administration had proposed, and anything that was presented to the Senate as an alternative during our debate this past summer.

Let me mention quickly just a few of the safety provisions in the bill.

Licenses will be checked for every driver transporting hazardous materials and for at least half of all other Mexican truck drivers every time they cross the border.

Mexican trucks will undergo rigorous inspections before they are allowed full access to our highways, and they will be reinspected every 90 days.

And trucking firms will need to demonstrate that they have a drug and alcohol testing program, proof of insurance, and drivers who have clean driving records before the first truck crosses the border.

There are many people to thank for their contributions to this bill.

The former chairman of the subcommittee and now its ranking member, Senator SHELBY has been a stalwart ally and regular contributor to our efforts.

Congressman ROGERS, the chairman of the House subcommittee is not only an outstanding chairman, he is a true Kentucky gentleman as well.

I also want to thank Representative SABO of Minnesota, the ranking member of the House subcommittee, whose leadership on the Mexican truck issue was essential to our getting an outstanding safety regimen in place.

As always, I thank Senator BYRD and Senator STEVENS for their assistance throughout the process.

I also thank the House and Senate Appropriations subcommittee staffs—along with some members of my personal staff who have worked a great many hours to bring together this conference agreement, including:

On the Senate subcommittee on Transportation appropriations, for the majority: Peter Rogoff, Kate Hallahan, Cynthia Stowe, and Angela Lee;

For the minority: Wally Burnett Paul Doerrer, and Candice Rogers,

On the House subcommittee on Transportation appropriations, for the majority: Rich Efford, Stephanie Gupta, Cheryle Tucker, Linda Muir, and Theresa Kohler;

For the minority: Bev Pheto;

On the chairman personal staff, Rich Desimone and Dale Learn;

On the Senate Commerce, Science, and Transportation Committee, Debbie Hersman.

I thank all these people who spent a lot of time helping us to get to this point. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. SHELBY. Madam President, I yield myself as much time as I consume.

I rise in support of the fiscal year 2002 Transportation appropriations conference report before the Senate this morning. While I do not support every item, policy, program, or initiative in the conference report or statement of managers, I do support the package reported overwhelmingly from the conference committee and as just described by the Senator from Washington.

This is the first year the Senator from Washington is chair of the Transportation Appropriations Subcommittee, and I believe that she has accounted herself well on this bill. This is a balanced bill.

Clearly, the Mexican truck issue reflects that balanced approach. I believe that the Senator from Washington did an admirable job of managing this issue through a lengthy debate on the Senate floor and through the conference committee negotiations with the House and the administration.

The resolution of the Mexican truck issue allows for the safe opening of the border to Mexican trucks with appropriate inspections, oversight, and audits of Mexican-domiciled trucks and trucking companies. This compromise kept the focus on truck safety and security at our border and never lost sight of the need to work with the administration and the House to forge a workable solution.

Our approach on this issue was always to move the debate forward and allow a resolution based on safety standards rather than prohibiting any action by the department to manage the truck safety issues we face at our southern border. I think the conference report treatment of this matter meets that test.

The FAA, the Coast Guard, and the Department's new Transportation Security Agency are all adequately, if not

generously, funded in this bill. The funding levels match the AIR 21 levels for the FAA's two capital accounts, and the funding for FAA operations meets the President's budget request.

Accordingly, the conference report meets the TEA 21 transit funding levels and increases the obligation limitation for highways above the TEA 21 firewalled levels. This funding commitment recognizes the priorities our colleagues in the Senate place on these accounts.

This is not only the first year of the Senator from Washington as the chair of this subcommittee, it is also the first year that Peter Rogoff has assisted her on the bill as the majority clerk. The committee and the Senator from Washington were both well served by Peter Rogoff—and his staff, Kate Hallahan, and Coast Guard Commander Cyndi Stowe.

I also commend Wally Burnett and Paul Doerrer of my staff on the committee. They worked hand in hand with the Democrats. I believe that is why we are where we are today, on the verge of adopting this conference report.

I urge all of my colleagues to support the conference report and send it to the President for his signature, with the type of overwhelming margin we saw in the other body of a 371-to-11 vote on the adoption of this report.

I reserve the remainder of my time and yield the floor.

Mr. BYRD. Mr. President, the Senate has now turned to consideration of the conference report accompanying the Transportation and Related Agencies Appropriations Act for Fiscal Year 2002. The bill includes a combination of appropriations and obligation limitations totaling $59.643 billion. That is $1.526 billion or 2.6 percent higher than the level provided for fiscal year 2001.

This is the ninth of the thirteen appropriations conference reports to come before the Senate. It is the ninth conference report that is within its 302 (B) allocation and it is fully consistent with the $686 billion bipartisan budget agreement on discretionary spending for the thirteen bills.

When the President signed the Transportation Equity Act for the 21st Century, he placed into law a provision I and my colleague from Texas, Senator GRAMM, championed here in the Senate. That provision served to guarantee that we appropriate every year on our Nation's highway system the funds that are received into the Highway Trust Fund through fuel taxes at the pump. I'm pleased to say that this year's Transportation bill, like every Transportation bill enacted since TEA–21, honors that commitment. Indeed, this year, for the first time since 1998, the Transportation bill provides more money for highways than was assumed in the highway guarantee—$100 million more. This is made possible since we still have an unobligated balance in the trust fund that existed before TEA–21 was enacted. So I commend the managers of the bill, Senators MURRAY and SHELBY, for making this significant investment in our Nation's highway infrastructure which is very much in need of repair, restoration, and expansion.

As long as I have had the pleasure of serving on the Transportation Subcommittee, it has always operated in an open and bipartisan manner. I am pleased to see that this tradition has continued under the leadership of Senator MURRAY. She and Senator SHELBY have cooperated on all aspects of this bill. Both of them were required to take on the very contentious issue regarding the safety risks of Mexican trucks traveling on our highways. We debated that issue for several days here in the Senate and took a total of three cloture votes during that debate. Senators MURRAY and SHELBY stood their ground on the floor of the Senate and they prevailed. They then went to conference and negotiated a compromise with the House that maintains the strong safety requirements passed by the Senate but eliminates the threat of a veto against this bill.

I commend both managers and their respective staffs for a job well done and I encourage all members to support the conference report.

Mr. BAUCUS. Mr. President, I rise today to voice my concern regarding an element on the Fiscal Year 2002 Transportation Appropriation Conference Report. While I believe that this report, for the most part, spends funding according to statute and aids our Nation's transportation system, I am very concerned about the distribution of a major funding category.

The Transportation Equity Act for the 21st Century, TEA 21, was passed by the Congress in 1998 by overwhelming margins. For the first time receipts into the Highway Trust Fund were guaranteed to be spent for transportation purposes. This is accomplished through the annual calculation of Revenue Aligned Budget Authority, RABA, which makes adjustments in obligations to compensate for actual receipts into the Trust Fund versus the estimated authorization included in TEA 21 for the fiscal year.

While I am pleased that the Appropriations Committee has upheld the firewalls in this conference report, I find the redistribution of RABA funds to be unacceptable. Under TEA 21, RABA funds are to be distributed proportionately to the States through formula apportionments and also to allocated programs. This conference report is a radical departure from that and is a cause for great concern. States receive less money in this conference report than is called for under TEA 21. For that reason, this conference report is in violation of TEA 21.

I am dismayed to have to voice my concern regarding an otherwise beneficial transportation bill. However, as an author of TEA 21 and a believer in its principles, I am saddened to see TEA 21 violated at the expense of the States.

Mr. SMITH of New Hampshire. Mr. President, I rise to speak about the transportation appropriations conference report.

First, I wish to commend the Appropriations Committee members for their determination to protect our highways from unsafe Mexican trucks.

I am not eager for trucks to freely cross from Mexico into the United States, for many reasons, but I am pleased that these trucks will at least be required to pass a safety compliance review.

The remainder of my comments have to do with the portion of the conference report that funds the Federal-aid highway program.

As the ranking member of the Environment and Public Works Committee, with authorizing jurisdiction over the highway program, I am pleased with the overall funding level for Federal-aid highways.

As my colleagues will recall, one of the major accomplishments of TEA–21, passed by Congress in 1998, was that for the first time, gas tax revenues into the Highway Trust Funds were guaranteed to be promptly returned to the States for transportation spending.

This guarantee is accomplished with a provision in TEA–21 called Revenue Aligned Budget Authority, or RABA as it is known.

RABA calculations compare actual gas tax receipts to our 1998 estimates, and guaranteed funding will go up or down depending on whether we have more or less revenue in the Highway Trust Fund than TEA–21 anticipated.

Reflecting several years of a strong economy, gas tax receipts have been billions of dollars more than we anticipated in 1998.

This year, as guaranteed by TEA–21, the Federal-aid highway program is funded at almost $33 billion ($32.954 billion); an increase of about $1.2 billion over last year; which includes $4.5 billion from RABA funds.

As I said, I am pleased with the success of these funding guarantees.

But I am concerned about the diversion of over $1.5 billion to project earmarks instead of being distributed fairly under formulas developed in TEA–21.

There are 590 project earmarks from the Highway Trust Fund, and 55 more highway projects taken from the general fund.

I want to alert my colleagues to such extensive earmarking contained in this appropriations report.

This earmarking is mostly within discretionary programs created in TEA–21 and mostly funded with the RABA funds.

Almost a billion dollars in RABA funds are diverted away from the fair distribution that we agreed to in TEA–21, and are used for earmarks in this conference report.

This money does not get distributed evenly as authorized in TEA–21, but there are winners and losers.

Some States get a lot of this money for projects, some get very little.

This process completely distorts the funding formulas we agreed to in TEA–21.

It also distorts the discretionary programs we created in TEA–21 for projects that meet specified criteria.

For instance, one pilot program we created to fund local projects that link transportation and community needs, for instance, was authorized in TEA–21 at $25 million per year.

This year, that program has become the catch-all for project earmarks, with a total of 219 projects at a cost of $276 million.

This is incredible that a small discretionary program has grown to an earmarking account at over 10 times the authorized amount.

The Appropriations Committee began earmarking these TEA–21 accounts a few years ago, over strong objections from the authorizing committees, and the practice has grown exponentially each year.

Indeed, the Appropriations Committee has begun the practice of soliciting project requests, creating a terrible dilemma where the number of projects that Members submit far exceed any authorized amounts.

And now Members have no choice but to compete for these discretionary funds in the appropriations process.

I admit to requesting projects for my State that received funding only because the pot of money grew so large, again from $25 million to $276 million.

The Appropriations Committee has gone further now than in recent years toward making so many transportation project funding decisions.

I believe strongly that State and local agencies are responsible for transportation planning and funding decisions.

I much prefer to send Highway Trust Fund dollars back to the States and I do not think Congress should pick and choose projects.

Where any fault for this situation rests with the framework in TEA–21, we will address it in the reauthorization of TEA–21.

Next year the Environment and Public Works Committee will begin hearings on reauthorization, and I know that there is a lot of concern about this earmarking process.

I will vote in favor of this conference report for the good it contains, but I am compelled to register my strong objections to the hundreds of highway projects that do not belong in an appropriations bill.

Mr. SARBANES. Mr. President, I want to take a moment while the transportation appropriations conference report is pending before us to express my concern, as chairman of the Senate Banking Committee, which has jurisdiction over the Federal transit laws, about a provision in that report that attempts by report language to rewrite established law by reducing the Federal match for New Start transit projects from 80 percent to 60 percent. I am referring to language in the conference report that would ''direct [the Federal Transit Administration] not to sign any new full funding grant agreements after September 30, 2002 that have a maximum federal share of higher than 60 percent.'' The Senate Banking Committee will begin to consider transit reauthorization issues next year. In the meantime, we have not had the benefit of any hearings or other public debate on this issue that would justify such report language.

Over 200 communities around the country, in urban, suburban, and rural areas, are considering light rail or other fixed guideway transit investments to meet their growing transportation needs. Recognizing this increasing demand, Congress in 1998 passed the Transportation Equity Act for the 21st Century, which authorized almost $8.2 billion over 6 years to fund these New Starts projects.

The process for evaluating and awarding a Federal grant under the New Starts program is laid out in the Federal transit laws, found in section 5309 of Title 49, United States Code. Section 5309(h) specifies that ''[a Federal] grant for [a New Starts] project is for 80 percent of the net project cost, unless the grant recipient requests a lower grant percentage.'' By including language in the conference report—not in the statute—directing the FTA not to sign new full funding grant agreements after September 30, 2002 with a Federal share greater than 60 percent, the conferees are seeking to direct the FTA to act contrary to existing law.

Efforts to alter the Federal share would disrupt the level playing field established when the Intermodal Surface Transportation Efficiency Act—ISTEA—set forth the 80 percent Federal cap for both highway and transit projects. ISTEA created a funding system by which communities could choose between transportation modes based on local needs, not based on the amount of Federal money available for the project. Seeking to lower the Federal match for transit projects while keeping the available highway match at 80 percent has the potential to skew the dynamics of choice for local communities.

It is true that there is very strong demand for New Starts funding. This is an issue which will be thoroughly considered as the transit laws are reauthorized in less than two years' time. Given the importance of the New Starts program to communities around the country, any proposal for dealing with this issue should be thoroughly considered. Report language directions to the FTA to act contrary to existing law are not a constructive contribution to this thorough consideration.

BUS REPLACEMENT

Mr. HARKIN. Mr. President, the conference report indicates that $5 million is provided for bus replacement in Iowa. But, it is my understanding that the intent was to allow these funds which have been allocated in a collaborative process involving the Iowa DOT and the local transit authorities to be used for bus replacement, bus expansion and for facility and equipment costs.

Mrs. MURRAY. Mr. President, the Senator from Iowa is correct regarding the allocation of these funds. The intention is that the funds may be used for the authorized purposes that you noted.

FUNDING OF TRANSPORTATION SECURITY IMPROVEMENT MEASURES

Mr. LIEBERMAN. I say to Senator MURRAY, I would like to confirm my understanding that between the funding you have included in the conference report for the Transportation Security Administration and the funding included in the bill for the Federal Aviation Administration's research, engineering and development, there are sufficient funds for the expanded use of existing technology and research and development of new technology to improve aviation security. Is that correct?

Mrs. MURRAY. The Senator is correct. The funds appropriated are intended to cover those costs.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SHELBY. Madam President, I suggest the absence of a quorum.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator will withhold.

Mrs. MURRAY. I ask the Senator to ask the time be equally divided and request he retain the remainder of the time of the chairman and ranking member toward the end.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Madam President, for the information of all Members, the majority leader has indicated that the vote on this matter will occur at 12:30 today.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Without objection, the quorum call will be charged as previously specified.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Madam President, how much time am I allowed?

The ACTING PRESIDENT pro tempore. The Senator has 8 minutes.

Mr. DORGAN. Madam President, I shall not take all 8 minutes. I understand there is a long line of people

wishing to speak on this conference report later.

First of all, I compliment the chairman and ranking member from the Senate side. I think they have done an extraordinary job on the conference report. I appreciate the work they have done on a range of issues. I think the Senate owes them a debt of gratitude.

I could spend some long period of time talking about the important provisions in this Transportation conference report. I know it took a long while to get to this point. Senator MURRAY, chairing the subcommittee on the Senate side, and others who have worked on this bill for some length of time undoubtedly wish this had been completed much earlier, but there were a series of things that prevented it from happening. In any event, at the end of this session we have a conference report that contains a lot of important items for this country's transportation system. I compliment Senator SHELBY and Senator MURRAY and thank them for their work.

I do want to say—and I will say it briefly—there are two items in the conference report that provide some heartburn for me. The conference was required—or forced, I guess—to accept a provision dealing with the spending of $400,000 to put airport signs up that describe National Airport really as Reagan National Airport. This conference report, because the House insisted, requires the Metro Airport Authority to spend $400,000 changing signs so that people will not be confused that they are at the airport when, in fact, the signs now say ''National Airport.''

George Will had a little something to say about that in a piece in April of this year. He said:

> Travelers too oblivious to know they are at an airport, when large, clear signs say they are, should be given those little plastic pilot wings that are issued to unaccompanied children taken into protective custody. The conservatives want to get Congress to order Metro officials to spend several thousand dollars to add Reagan's name to the station signs and all references to the station on the maps.

He is talking about the station at the Metro stop.

He said:

> Reagan had a memorable thing or two to say about bossy Federal institutions meddling in local affairs.

I want to make the point that the House of Representatives has insisted on this for some long while. I regret they forced their will into this conference. I think it is a waste of $400,000 that probably could have better been used, if the House had thought clearly about this, for security.

We have a range of security needs, given post-September 11, on a range of transportation systems. I would have much rather seen, if the $400,000 is to be spent, that it be spent on Metro security. I know the Senators from Washington and Alabama share my concern about that.

Let me make one additional point, and that is on the issue of Mexican trucks. The House of Representatives had a provision that actually prohibited the Mexican trucks from coming into this country beyond the 20-mile limit. The Senate provision was not as strong but was a pretty good provision. I would have preferred a stronger provision. The provision that came out of conference is weaker than both.

I understand the work that Senator MURRAY and Senator SHELBY did. I am not here to criticize their work. I respect the work they did in conference to try to resolve this issue. They make the point—and it is an accurate point—that this is a restriction on funding for 1 year during the appropriations year. So this issue will not be concluded with this judgment in this conference committee. This issue will be a part of the interests of the authorizing committee, oversight by this subcommittee, and also will be a part of the interest of others of us in the Congress who still believe it will be unsafe to have any wholesale movement of Mexican trucks beyond the 20-mile border limit.

It is interesting to me that we now have a limitation on the movement of Mexican trucks in this country, and yet Mexican truck drivers with Mexican trucks have been apprehended in North Dakota, which, of course, is significantly beyond the 20-mile limit from the Mexican border. And it is true they have been apprehended in a good many other States as well.

We have a lot of difficulties, problems, and concerns trying to merge two different kinds of economies with respect to transportation, two different kinds of systems dealing with short- and long-haul trucks, and two different safety standards, different standards with respect to both drivers and trucks.

I wish we had in fact had the House position, which originally came to conference with a prohibition until adequate safety standards were in place and adequate inspection opportunities were in place. That, regrettably, is not the case. And I am not here to suggest that our two Senators—Senator MURRAY and Senator SHELBY—in any way weakened this provision. I am here to say the conference itself forced that weakening. I think that will not and cannot be the last word on this subject. Those on the authorizing committee and those of us who will return to this subject in the appropriations process next year will have more to say.

But having spoken on both of those issues, let me again say to my colleague, Senator MURRAY, and my colleague, Senator SHELBY, they operate in good faith and do an extraordinary job. They run a subcommittee that is very important to this country, especially again in relation to post-September 11, the issue of transportation, the security of our transportation systems in the country.

Our transportation industry is so important to this country's economy. There is no way you can overstate it. The appropriations bill offered to us today by Senators MURRAY and SHELBY is an appropriations bill that I think the Senate will want to approve. This conference report will get the Senate's approval today.

Madam President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. If the Senator will withhold, the Chair recognizes the Senator from Washington.

Mrs. MURRAY. Madam President, I ask unanimous consent the time be divided as before.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I understand under the UC I have 15 minutes; is that correct?

The PRESIDING OFFICER. The time has been reduced by a series of quorum calls. The Senator has 6 minutes.

Mr. MCCAIN. Six minutes. Mr. President, I ask unanimous consent I be granted 4 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I wish to express my strong opposition to the conference agreement on H.R. 2299, the fiscal year 2002 Transportation appropriations bill approved by the House and Senate conferees last week.

I once again find myself in a position in which I must express strong concerns with yet another appropriations bill. This measure, like the eight appropriations bills approved by the Congress this year and like so often has been the case during recent years, continues what I believe is an inappropriate overreach by the appropriators in an effort to fulfill their own agendas at the expense of both current law and the work of the authorizers.

They again are redirecting programmatic funding, funding that in many cases is authorized to be distributed by formula or at the discretion of the Secretary and based on competitive merit.

Instead of allowing the normal funding distribution process to go forward, the appropriators have earmarked that funding for pet projects for the members of the Appropriations Committee.

Before citing a host of examples of the pork barrel spending associated with this conference report, I want to first address the very important trade issue that the appropriators have tied to the pending measure, that is, the North American Free Trade Agreement, NAFTA.

As my colleagues well know, provisions in both the House and the Senate versions of the Transportation appropriations bill proposed to restrict the

administration's ability to abide by our obligations under NAFTA. As a result of this fact, the Statement of Administrative Policy included a very clear and direct veto threat stating that ''the Senate Committee has adopted provisions that could cause the United States to violate our commitments under NAFTA. Unless changes are made to the Senate bill, the President's senior advisors will recommend that the President veto the bill.''

Several of us also strongly objected to the appropriators' actions. As a result, we spent considerable floor time—nearly two full weeks in July—discussing the importance of NAFTA and our obligation to abide by our commitments to our trading partners.

At no time has the senior Senator from Texas or I argued that safety concerns were not of considerable importance in this debate. In fact, it was our proposal offered as an alternative to the Senate version that first called for an inspection of every Mexican truck similar to the model used in the State of California at the border.

Indeed, the proponents of NAFTA have had one goal since this issue surfaced in the DOT appropriations legislation this summer. From the beginning, our goal has been to ensure the appropriators did not succeed in their attempts through the DOT appropriations bill to effectively alter our solemn agreement with our neighbors to the South. If our trading partners are subject to the whimsical mood of the appropriators, how can we ever expect any nation that we have executed a trade agreement with, or one we are seeking to enter into trade agreements with, to have any faith that our word is true and we will abide by our agreements? If the appropriators' agenda had prevailed, I shudder to consider the consequences and the impact as we attempted to seek to negotiate new trade agreements or renewed ones.

After receiving assurances from the ranking member of the Appropriations Committee that he would work with the administration to ensure the conference agreement would not include any provisions that would prevent use from abiding by our NAFTA commitments, the senior Senator from Texas and I agreed to forgo some of our procedural rights and allowed the bill to go to conference without several additional votes and the expenditure of additional floor time. While early into the conference the Senate managers of the bill issued a release indicating a determination to provoke a Presidential veto, the appropriators finally agreed last week to incorporate provisions agreeable to the administration.

Upon hearing of the agreement with respect to Mexican trucks last week, I raised reservations over some of the provisions that I felt could be troublesome. However, in response to these concerns, the administration has assured us the agreement is not in violation of NAFTA. Last Friday, November 30, the White House issued the following statement of the President:

The compromise reached by the House and Senate appropriators on Mexican trucking is an important victory for safety and free trade. We must promote the highest level of safety and security on American highways while meeting our commitments to our friends to the South. The compromise reached by the conferees will achieve these twin objectives by permitting our border to be opened in a timely manner and ensuring that all United States safety standards will be applied to every truck and bus operating on our highways.

Moreover, I have received a letter from U.S. Trade Representative, Robert Zoellick, which states:

The Administration supports the agreement reached by the House and Senate appropriators on Mexican trucking as fully promoting highway safety and U.S. trade commitments. In addition, it will permit the United States to meet the commitments made to Mexico as part of the North American Free Trade Agreement.

I ask unanimous consent a copy of that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, THE UNITED STATES TRADE REPRESENTATIVE,

Washington, DC.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to convey the Administration's views on Section 350 of H.R. 2299, the Department of Transportation's appropriations bill for fiscal year 2002.

The Administration supports the agreement reached by the House and Senate appropriators on Mexican trucking as fully promoting highway safety and U.S. trade commitments. In addition, it will permit the United States to meet the commitments made to Mexico as part of the North American Free Trade Agreement.

Sincerely,

ROBERT B. ZOELLICK.

Mr. MCCAIN. Additionally, I note the conference report does include additional funding to address the many safety related enforcement requirements concerning Mexican carriers and drivers. While much of my statement today will express disagreement to the actions of the appropriators, in this case I want to note for the record that they have worked to provide sufficient funding to allow DOT to carry out the requirements with respect to the Mexican trucking issue and enable the border to be opened in a time-frame deemed appropriate by the administration.

Mr. President, enactment of this legislation will not be the end of our duediligence to ensure we are allowed to open the border to Mexican carriers and in turn, allow American carriers to do business in Mexico. I intend to stay vigilant on this very important issue and will monitor the administration's actions with respect to the border opening in my capacity as ranking member of the Senate Committee on Commerce, Science, and Transportation. I remain committed to doing all I can to ensure the border is open consistent with our obligations under NAFTA while protecting the safety of the American traveling public.

Mr. President, this is a bittersweet victory for highway safety and free trade. On the one hand the United States will be allowed to keep its promise to abide by its solemn treaty. Yet on the other hand, the egregious process of pork barrel earmarking continues. Unless you are from a state with a member on the Appropriations Committee, your State's transportation dollars most likely will be reduced by enactment of this bill which in many cases redirects authorized funding programs for the sake of the home-state projects of the appropriators.

I recognize that there are very important provisions in the legislation, sections that appropriate funds for programs vital to the safety and security of the traveling public and our national transportation system over all. Yet despite that necessary funding, and the fact that the legislation is not in violation of NAFTA, it once again goes overboard on pork barrel spending.

It is so bad, in fact, yesterday's Wall Street Journal included an article highlighting the very egregious actions of the appropriators to reduce state transportation dollars and direct those funds to earmarked projects. The article is entitled ''Bill Gains To Cut State-Controlled Highway Funds.'' I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BILL GAINS TO CUT STATE-CONTROLLED HIGHWAY FUNDS

(By David Rogers)

WASHINGTON.—In a total display of patronage politics, Congress is poised to remove nearly $450 million of federal highway aid from state control to instead spend the money on road projects selected by lawmakers.

The appropriations leadership added the provision to a $59.6 billion transportation budget for fiscal-year 2002 that was filed just before dawn Friday and rushed through the House hours later, where it passed 371–11. Tight limits on Senate debate all but ensure final passage this week, despite complaints that lawmakers are tampering with funding formulas laid out in the 1998 highway act.

Until the dust settles, it is difficult to say precisely how individual states will fare, but three—Kentucky, Alabama, and West Virginia—are clear winners. Rep. Hal Rogers (R., Ky), who led the House negotiators, engineered the arrangement and used it to corral extra dollars for his state. Alabama had three votes at the negotiating table, including Sen. Richard Shelby, the Senate's top GOP negotiator. West Virginia needed only one, Sen. Robert Byrd, chairman of the Appropriations panel and a master at capturing highway money for his rural state. Among the four largest earmarked highway accounts, Kentucky, West Virginia and Alabama are promised $211 million, almost a fifth of the $1.1 billion total.

Never before has the Appropriations leadership gone so far in tampering with the 1998 highway act, which was built on the premise that federal gas-tax receipts should be returned quickly to the states regardless of other federal spending priorities. The act

even created a mechanism to adjust authorized highway funding upward as revenue rose. In recent years, that pot of money—identified by the title Revenue Aligned Budget Authority, or RABA—has exploded, reaching $4.5 billion this year.

Under the highway law, $3.95 billion was to be apportioned among the states this year with the remaining $574 million going to about 40 highway programs authorized in the highway act and administered through the Transportation Department. The bill would cut the state share to $3.5 billion and combine the extra $450 million with the $574 million, creating a $1 billion-plus pot.

The negotiators made wholesale changes in the priorities set in the highway act, substituting projects they favor for the ones preferred by the House and Senate transportation committees that wrote the highway law. A $25 million community-preservation pilot program, for example, ballooned to $276 million, with virtually each dollar earmarked as to where it should be spent.

The Bush administration had opened the door by proposing changes in how RABA dollars are distributed. Negotiators said the $3.5 billion apportioned to the states narrowly exceeds the amount proposed in the president's budget, and an additional $100 million has been added elsewhere to core highway funds available to the states. There is little doubt the deal was driven by pork-barrel politics. There were bitter fights over unsuccessful Republican attempts to deny money for vulnerable Democrats in conservative House districts in Mississippi and Arkansas.

The bill would impose a much tougher safety regimen than the White House had wanted for Mexican trucks that are due to begin operating in the U.S. next year. The Transportation Department expects to meet the requirements and open the border by the spring—just a few months later than planned. But the final settlement is a personal victory for Rep. Martin Salo (D., Minn.) and Sen. Patty Murray (D. Wash.), the two managers of the bill who had insisted lawmakers must consider safety.

For Sen. Byrd, there will be more at stake than the transportation bill. The West Virginia Democrat will be at center stage again this week, which he is expected to force Senate roll calls on adding more money for homeland security to a pending Pentagon budget. Though the White House should win an early procedural vote, Sen. Byrd appears prepared to confront Republicans with the choice of accepting the money or pulling down the entire military budget.

Mr. MCCAIN. Mr. President, I ask my colleagues, how much longer are we going to let the appropriators subordinate the jurisdiction and responsibilities of the authorizers? Didn't most of us think the multi-year highway funding legislation, known as TEA–21, would essentially be the law of the land through fiscal year 2003 with respect to highway funding formulas and state apportionments? I guess we were wrong, given the appropriations reprogramming maneuvers.

Let me again quote from the Wall Street Journal: ''The negotiators made wholesale changes in the priorities set in the highway act, substituting projects they favor for the ones preferred by the House and Senate transportation committees that wrote the highway law.'' This is precisely why no projects should be earmarked by either the authorizers or the appropriators and we should instead allow the states to fund the projects that meet the legitimate transportation needs of their states.

Mr. President, the Revenue Aligned Budget Authority—RABA—funds mentioned in the article are to be distributed proportionately to the states through formula apportionments and to allocated programs. This conference report represents a fundamental departure from that approach.

To pay for some of the report's many earmarks, $423 million will be redirected from state apportionments, meaning the states lose 10.7 percent of RABA funds from the regular formula program. Further, another $423 million will be redistributed from allocated programs in a manner in which the appropriators have selected programmatic winners and losers. In fact, 24 of 38 highway funding programs will receive none of the funding under RABA they were to receive before the appropriators' stroke of pen. But again, if you have the good fortune to reside in a state with a member in a leadership position on the DOT Appropriations Subcommittee, you are among the winners in this appropriations bill lottery. I ask unanimous consent that two charts prepared by the Federal Highway Administration to show the impact on each state and the allocated programs through the RABA redistributing work of the appropriators be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION—ESTIMATED RABA DISTRIBUTION

Federal-aid highway programs	TEA–21	Conference	Difference
Apportioned Programs	3,968,764,800	3,545,423,946	(423,340,854)
Allocated Programs:			
Federal Lands Highways Program:			
Indian Reservation Roads	36,050,486	36,565,651	(484,835)
Public Lands Highways	32,249,049	31,815,091	(433,958)
Park Roads and Parkways	21,631,440	21,339,391	(292,049)
Refuge Roads	2,624,255	2,586,593	(37,662)
National Corridor Planning & Devel. & Coord. Border Infrastructure Pg	18,633,932	352,256,000	333,622,068
Construction of Ferry Boats and Ferry Terminal Facilities	5,059,012	25,579,000	20,519,988
National Scenic Byways Program	3,393,730	3,348,128	(45,602)
Value Pricing Pilot Program	1,464,300	0	(1,464,300)
High Priority Projects Program	236,671,037	0	(236,671,037)
Highway Use Tax Evasion Projects	666,113	0	(666,113)
Commonwealth of Puerto Rico Highway Program	14,642,998	0	(14,642,998)
Woodrow Wilson Memorial Bridge	29,946,366	0	(29,946,366)
Miscellaneous Studies, Reports, & Projects	2,503,665	0	(2,503,665)
Magnetic Levitation Transp. Tech. Deployment Program	0	0	0
Transportation and Community and System Preservation Pilot Program	3,324,822	251,092,600	247,767,778
Safety Incentive Grants for Use of Seat Belts	14,907,146	0	(14,907,146)
Transportation Infrastructure Finance and Innovation	15,969,481	0	(15,969,481)
Surface Transportation Research	13,442,846	0	(13,442,846)
Technology Deployment Program	5,989,273	0	(5,989,273)
Training and Education	2,526,635	0	(2,526,635)
Bureau of Transportation Statistics	4,128,751	0	(4,128,751)
ITS Standards, Research, Operational Tests, and Development	13,976,885	0	(13,976,885)
ITS Deployment	15,969,481	0	(15,969,481)
University Transportation Research	3,525,804	0	(3,525,804)
Emergency Relief Program	13,310,772	0	(13,310,772)
Interstate Maintenance Discretionary	13,310,772	76,025,000	62,714,228
Territorial Highways	4,846,545	0	(4,846,545)
Alaska Highway	2,503,665	0	(2,503,665)
Operation Lifesaver	68,908	0	(68,908)
High Speed Rail	700,567	0	(700,567)
DBE & Supportive Services	2,664,451	0	(2,664,451)
Bridge Discretionary	13,310,772	62,650,000	49,339,228
Study of CMAQ Program Effectiveness	0	0	0
Long-term Pavement	0	10,000,000	10,000,000
New Freedom Initiative	0	0	0
State Border Infrastructure	0	56,300,000	56,300,000
Motor Carrier Safety Grants	24,221,241	23,896,000	(325,241)
Public Lands Discretionary	0	45,122,600	45,122,600
Subtotal, allocated programs	574,235,200	997,576,054	423,340,854
Total	4,543,000,000	4,543,000,000	

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION—DISTRIBUTION OF ESTIMATED FY 2002 REVENUE ALIGNED BUDGET AUTHORITY

States	TEA–21	Conference	Difference
Alabama	78,660,918	70,270,303	(8,390,615)
Alaska	47,506,115	42,438,725	(5,067,390)
Arizona	71,794,955	64,136,719	(7,658,236)
Arkansas	50,998,628	45,558,698	(5,439,930)
California	357,228,521	319,088,155	(38,140,386)
Colorado	51,633,630	46,125,966	(5,507,664)
Connecticut	59,372,721	53,039,542	(6,333,179)
Delaware	18,097,567	16,167,133	(1,930,434)
Dist. of Col.	15,517,870	13,862,608	(1,655,262)
Florida	187,841,638	167,804,915	(20,036,723)
Georgia	141,803,966	126,677,998	(15,125,968)
Hawaii	20,042,262	17,904,391	(2,137,871)
Idaho	28,813,232	25,739,778	(3,073,454)
Illinois	129,699,234	115,864,455	(13,834,779)
Indiana	91,837,217	82,041,110	(9,796,107)
Iowa	46,752,049	41,765,094	(4,986,955)
Kansas	45,442,357	40,595,104	(4,847,253)
Kentucky	68,342,130	61,052,200	(7,289,930)
Louisiana	61,436,479	54,883,163	(6,553,316)
Maine	20,796,328	18,578,021	(2,218,307)
Maryland	64,532,116	57,648,593	(6,883,523)
Massachusetts	71,715,580	64,065,811	(7,649,769)
Michigan	126,563,909	113,063,570	(13,500,339)
Minnesota	57,110,525	51,018,651	(6,091,874)
Mississippi	50,720,814	45,310,518	(5,410,296)
Missouri	90,924,402	81,225,663	(9,698,739)
Montana	40,640,152	36,305,141	(4,335,011)
Nebraska	31,472,305	28,150,666	(3,321,639)
Nevada	28,932,295	25,846,141	(3,086,154)
New Hampshire	19,605,698	17,514,394	(2,091,304)
New Jersey	100,687,563	89,947,406	(10,740,157)
New Mexico	38,735,144	34,603,338	(4,131,806)
New York	197,128,548	176,101,207	(21,027,341)
North Carolina	111,046,039	99,200,962	(11,845,077)
North Dakota	26,630,412	23,789,795	(2,840,617)
Ohio	136,327,071	121,785,313	(14,541,758)
Oklahoma	60,722,101	54,244,986	(6,477,115)
Oregon	46,434,548	41,481,460	(4,953,088)
Pennsylvania	186,849,447	166,918,559	(19,930,888)
Rhode Island	24,050,715	21,485,269	(2,565,446)
South Carolina	67,429,314	60,236,753	(7,192,561)
South Dakota	27,979,792	24,995,239	(2,984,553)
Tennessee	89,614,709	80,055,673	(9,559,036)
Texas	310,674,910	277,535,786	(33,139,124)
Utah	30,202,300	26,980,676	(3,221,624)
Vermont	18,375,381	16,415,313	(1,960,068)
Virginia	103,703,824	92,641,928	(11,061,896)
Washington	68,461,193	61,158,563	(7,302,630)
West Virginia	41,711,718	37,262,406	(4,449,312)
Wisconsin	77,986,228	69,667,581	(8,318,647)
Wyoming	28,178,230	25,172,507	(3,005,723)
Subtotal	3,968,764,800	3,545,423,946	[1](423,340,854)
Allocated Programs	574,235,200	997,576,054	423,340,854
Total	4,543,000,000	4,543,000,000	0

[1] Represents (−10.7%).

Mr. MCCAIN. In addition to the RABA funding shell game, host of other actions by the appropriators merit concern. For example, section 330 of the conference report appropriates $144 million in grants for surface transportation projects while the Statement of Managers then earmarks the entire allotment for 55 projects in 31 States. I should point out that the Senate-passed version of the appropriations bill provided $20 million for these grants, not a dime of which was earmarked, while the House bill did not appropriate any funding for such grants. But through the will of the conferees, the level of funding for surface transportation projects grants are increased by $124 million and the conferees have recommended earmarks for every penny of the grant funding instead of allowing it to be made available for distribution on a competitive or meritorious basis.

Examples of these earmarks included in the Statement of Mangers include: $1.5 million for the Big South Fork Scenic Railroad enhancement project in Kentucky; $2 million for a public exhibition on ''America's Transportation Stories'' in Michigan—this sounds like a very critical and legitimate use of transportation dollars—and one of my favorites, $3 million for the Odyssey Maritime Project in Seattle, WA. What makes this last one a highlight is that the ''Odyssey Maritime Project'' is not a surface transportation project of all. It is, in fact, a museum. But the sponsor of that project must not have wanted us to really know what the funding was being allocated for and instead chose to incorporate some cleaver penmanship to mask the true nature of the so-called transportation project.

With respect to the Coast Guard, the conference report earmarks $2,000,000 for the Coast Guard to participate in an unrequested joint facility that would locate a new air station in Chicago with a new facility that would also house city and State facilities. The new marine safety and rescue station is not justified, not requested, and in fact would provide duplicative air coverage already met by other Coast Guard air stations.

The conference report also earmarks $4,650,000 to test and evaluate a currently developed 85-foot fast patrol craft that is manufactured in the United States and has a top speed of 40 knots. Interestingly, there is only one company with such a patrol craft, Guardian Marine International, LLC., and it is based in the State of Washington. The Coast Guard did not request this vessel, does not need this vessel, nor does this vessel meet the Coast Guard's requirements. The Coast Guard's resources are already stretched thin and this will only hamper its ability to meet its new challenges since September 11. But again, the appropriators know best.

The conference report further earmarks $500,000 for the Columbia River Aquatic Non-indigenous Species Initiative—CRANSI—Center at Portland State University in Portland, Oregon, to support surveys of nonindigenous aquatic species in the Columbia River. This earmark is directly taking away much needed Coast Guard R&D funds that could be used to fight the war on drugs, protect our ports, or aid in search and rescue efforts.

And, as with other modes of transportation, the appropriators have larded the DOT's aviation programs with numerous earmarks and authorizing language that is within the jurisdiction of the Commerce Committee. For example, the Statement of Managers earmarks more than $206 million in FAA facilities and equipment projects at dozens of specific airports. I am not sure how the appropriators seem to know precisely which pieces of equipment need to be installed at which airports, but I believe that we should be leaving these decisions to the FAA. The more projects that are forced upon the agency, the less ability it has to focus on those that are truly needed to enhance safety and capacity.

The appropriators do the same thing when it comes to airport projects and the expenditure of discretionary funds. The Statement of Managers earmarks more than 100 specific airport construction projects totaling more than $200 million. Once again, this is intended to take away significantly from the discretion of the FAA to determine the most important needs of the system as a whole.

This might be the time to remind the Secretary and the modal administrators that the slew of projects included in the Statement of Managers are advisory only. The Statement of Managers does not have the force of law and the FAA and other modal agencies must exercise its judgment in complying with the recommendations of the managers.

While the aviation earmarking is bad, the raiding of existing aviation accounts for unrelated purposes is even worse. The FAA's Airport Improvement Program is supposed to be devoted to the infrastructure needs of our nation's airports. Yet the conference report take tens of millions of dollars out of AIP to pay for the FAA's costs of administering AIP, the Essential Air Service program, and the Small Community Air Service Developing Pilot Program. Theses are worthy activities and programs, but it violates the long-established purpose of AIP to use monies for these things.

Mr. President, last year I warned that we should just as well get rid of DOT and let the appropriators act as the authorizing agency since they so routinely substitute their own judgment for that of the agency's. Well, apparently I have a job in my retirement predicting the future. There is a provision in this bill that prohibits the use of any funds for a regional airport in southeast Louisiana, unless a commission of stakeholders submits a comprehensive plan for the Administrator's approval. While that is not necessarily good government, that is well within the agency purview. However, the bill goes further and requires that if the Administrator approves the plan, it must be then submitted to the Appropriations Committee for approval before funds can be spent.

This is unconscionable. Clearly the appropriators do not want this airport to be funded unless they say so. Are the appropriators now going to require that every decision that is made by the oversight agency be approved by them first? Will the Administrator or Secretary have to send letters regarding transportation policy to Congress for approval? Will DOT leave requests and travel schedules have to be sent to the Appropriations Committees? Where does this end? I understand that Congress is supposed to act as a check and balance to the executive branch, but I must ask, who is serving as a check and balance to the appropriators? At a minimum, isn't it supposed to be the authorizers? But passage of this conference report will provide clear proof that once again there are no checks and there is no balance.

Mr. President, I could go on and on but will refrain. It is hard to imagine but despite the seemingly unlimited

lists of projects and funding redirectives provided for in this bill, it actually could have been worse. The appropriators did rightly reject some of the requests and wish-lists they received, such as including language to effectively alter the federal cap on the Boston Central Artery Tunnel Project—the Big Dig—or to take action to eliminate the Amtrak self-sufficiency requirement now that the Amtrak Reform Council has made its finding that Amtrak will not met its statutory directive. Perhaps if the requesters were appropriators, their Christmas wish list would have been fulfilled as well. I tell my colleagues, I will be going all over the country discussing this egregious, outrageous procedure which has gone completely out of control on a bipartisan basis. Of all the years I have seen this egregious porkbarrel spending, this is one of the worst.

The PRESIDING OFFICER. The Senator from Washington has 5 minutes remaining; the Senator from Alabama has 5 minutes remaining.

Mrs. MURRAY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. I yield 3 minutes of my time to the Senator from Pennsylvania, Mr. SPECTER.

Mr. SPECTER. Mr. President, I thank my colleague from Alabama for yielding me a brief period of time to comment about an omission from the appropriations conference report involving a constituent company of mine, Traffic.com. There had been an arrangement worked out in previous legislation. This would have given Traffic.com a followup contract for some $50 million where they have devised systems for monitoring traffic on the highways so the people can be informed where there is traffic congestion.

The first contract was awarded to Traffic.com under an arrangement where the second would follow through. There was competitive bidding for the first contract. The Department of Transportation wanted clarification, which was added in this Chamber on an amendment which was accepted to give the followup contract to Traffic.com. Then when we went to conference last week, I was informed a few minutes before the conference began that the provision had been dropped. There had been no notification.

When I raised the issue in the conference, I was advised there was legislation which prohibited this arrangement which they characterized as ''sole source contracting,'' but, in fact, it was not because the first contract had been competitively bid with the understanding that the second contract would follow.

In any event, our research in the interim since the conference committee met last week, to today, shows there is no legislative prohibition against this arrangement, even if it were sole source contracting, which, I repeat again, it is not. We then discussed at the conference the approach of having it included in the supplemental appropriations bill, which we are working on now. The Appropriations Committee is meeting this afternoon.

I thank the distinguished chairman of the subcommittee, Senator MURRAY, and the distinguished ranking member, Senator SHELBY, for commenting at that time they would support the effort to get it in the supplemental appropriations bill so we hope we can be cured at that time.

I did want to make the brief statement on the record at this point. I thank Senator SHELBY for yielding me the time. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. How much time remains?

The PRESIDING OFFICER. Three minutes five seconds.

Mr. SHELBY. I yield that time back.

UNANIMOUS CONSENT AGREEMENT

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Under the authority granted to the majority leader by the unanimous consent agreement of December 3, I ask unanimous consent that the vote on adoption of the conference report to accompany H.R. 2299, the Transportation appropriations bill occur at 12:30 p.m. today, without further intervening action, and I now ask for the yeas and nays on adoption.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

Mrs. MURRAY. Mr. President, back in July and August, the Senate spent a lot of time talking about the safety of Mexican trucks.

Originally, the White House wanted to allow Mexican trucks to travel throughout the United States without sufficient safety checks.

That raised real safety concerns for everyone from the Advocates for Highway & Auto Safety to the AAA of Texas.

The House of Representatives, meanwhile, voted to prevent any Mexican trucks from traveling beyond a limited area near the border.

I have always believed that we could ensure our safety and promote commerce at the same time.

So Senator SHELBY and I—working with our colleagues on both sides of the aisle—created a commonsense safety plan.

The Senate turned back several amendments—and voted twice with strong bipartisan super-majorities—to invoke cloture both on the committee substitute and the bill itself.

This summer, there were several attempts to weaken the safety provisions, but the Senate consistently rejected them.

And I am proud to say that the final conference agreement strictly adheres to the outlines of the Senate bill.

This agreement prohibits the border from being opened to Mexican trucks until the DOT implements a number of important safety measures, and until the DOT's inspector general has concluded a thorough audit of the Department's efforts.

I would like to spend a moment comparing the conference agreement with the administration's original plan.

Let me start with compliance reviews, which are comprehensive inspections of a trucking firm's vehicles, its management systems, and all of its license, insurance, and maintenance records.

It looks at the trucking firm's operating and violation histories and yields a decision as to whether the firm should be allowed to continue operating in the U.S.

Under the administration's plans, there was never going to be a requirement that a Mexican trucking firm undergo a compliance review.

The conference agreement, however, includes a requirement that each and every Mexican trucking firm undergo a compliance review before being granted permanent operating authority. There are no exceptions.

Let's look at on-site inspections.

The administration never intended to require that inspections by U.S. truck safety inspectors take place on-site at a Mexican trucking firm's facilities.

The conference agreement, however, requires that U.S. truck safety inspectors must visit every Mexican trucking firm either when they conduct their initial safety examination or when they conduct a compliance review to determine whether the firm should be granted permanent operating authority in the U.S.

The only exception is granted to the smallest independent operators in Mexico. They will be required to have these same exams conducted at the border.

Even with this exception, it is likely that these smallest of firms will be visited on-site.

That's because the DOT will have to conduct on-site inspections of at least half of all firms and half of all the traffic volume coming into the U.S.

Originally, the administration did not intend to verify many licenses when Mexican truckers crossed the border.

The DOT told us that they would verify the licenses on a random basis—but deliberately avoided defining what was meant by the word ''random.''

That could mean verifying 1 out of every 100 licenses or 1 out of every 1,000 licenses.

Under the conference agreement, the DOT will be required to electronically verify at least one out of every two licenses.

And the actual ratio will be even higher.

That's because the conference agreement requires that border inspectors verify the license of every trucker carrying hazardous materials, and every trucker undergoing a Level I inspection, and then requires that inspectors

verify 50 percent of all other vehicles crossing the border.

On the issue of overweight trucks, the administration did not intend to implement any special effort to address overweight vehicles—even though Mexican weight limits far exceed those in the U.S.

The conference agreement, however, requires that—within 1 year of the date of enactment—each and every truck crossing the border at the ten busiest border crossings between the U.S. and Mexico will be weighed.

In fact, the conference agreement prohibits the border from being opened at all—until half of these border crossings have weigh-in-motion systems fully installed.

The administration did not intend to require that Mexican trucks cross the border only where DOT safety inspectors are on duty.

The conference agreement requires that the trucks cross where inspectors are on duty.

It also requires that they enter the U.S. at crossings where there is adequate capacity for the inspectors to conduct meaningful inspections and, if need be, place vehicles out-of-service for safety violations.

The DOT was planning to open the border whether or not a number of critical truck safety rulemakings had been finalized and published.

Some of these rulemakings have been delayed for years, but the DOT planned to open the border anyway.

The conference agreement, however, requires that the Secretary either implement policy directives or publish interim final rules that will immediately govern the behavior of trucking firms—before the border can be opened.

Now let's look at the hauling of hazardous materials across the border. The administration had not planned on implementing any unique requirements for hazardous materials trucks even though they represent a unique and dangerous threat on our highways.

The conference agreement, however, requires that even if other trucks have already been allowed to cross the border no hazardous material trucks will be allowed to enter the U.S. until the governments of the U.S. and Mexico enter into a separate agreement confirming that U.S. and Mexican drivers of these vehicles have been subjected to the same unique requirements.

Finally, concerning the oversight of the inspector general, the administration was planning to open the border without regard to the long list of safety deficiencies that had been cited by the DOT inspector general.

As far as the DOT was concerned, the inspector general could continue to publish as many critical audits as he wanted to—but they were going to open the border on January 1 without regard to whether any of the deficiencies had been addressed.

There wasn't even a process in place to require the Transportation Secretary to acknowledge the findings of the IG.

Under the conference agreement, no trucks may cross the border until the IG has completed another entire audit of the DOT's efforts.

And no trucks may cross the border until the Transportation Secretary has received the IG's findings and has certified in writing, in a manner addressing each of those findings, that the opening of the border does not present an unacceptable risk to our constituents.

So, the conference agreement includes a serious mechanism to hold the Transportation Secretary accountable for his decision to open the border.

And you can be sure that the Transportation Appropriations subcommittee will be holding a hearing with both the Transportation Secretary and the inspector general once the IG has made his findings and the Secretary is poised to issue his certification.

Some observers have suggested that the requirements of the conference agreement are not as restrictive as the measures that passed the Senate.

As I view it, the safety requirements are effectively the same.

The conference agreement gives the administration a degree of flexibility in implementing these safety requirements.

Others have said that the border is likely to open more quickly under the provisions of the conference agreement than under the Senate-passed bill.

That may be true. But I want to remind my colleagues that, it has never been our goal to keep the border closed.

I voted for NAFTA.

I represent a state that is highly-dependent on international trade.

And I believe in the economic benefits that come with lower trade barriers.

Throughout this entire process, my goal—and that of Senator SHELBY—has been to ensure the safety of our highways.

And I am proud that this conference agreement makes great progress for our safety.

I am prepared to yield back all of our time on the bill if there is no one to speak.

I yield back the remainder of our time.

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 10) to provide pension reform and for other purposes.

Pending:

Daschle (for Hatch/Baucus) Amendment No. 2170, in the nature of a substitute.

The PRESIDING OFFICER. The assistant majority leader.

Mr. REID. Mr. President, will the Chair indicate how much time is remaining on this matter?

The PRESIDING OFFICER. There remain 14 hours 40 minutes.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2202 TO AMENDMENT NO. 2170

Mr. DOMENICI. Mr. President, I call up amendment No. 2202 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 2202 to amendment No. 2170.

(Purpose: To strike the provision related to directed scorekeeping)

Strike section 105(c).

Mr. DOMENICI. Mr. President, I put before the Senate an interesting, simple amendment that we as a Senate should adopt. I hope this amendment is aired for a while. Because Senators have asked me not to, I do not have any intention to move rapidly. Other Senators are presently indisposed and they might come and perhaps become cosponsors. We will see what we can do.

But I want to make sure the Domenici amendment No. 2202 will not be mistaken for anything other than what it is. This amendment is not a killer amendment with reference to the underlying amendment. The railroad retirement bill will in no way be damaged by this amendment. This amendment is just a very simple recognition that the bill has some language in it that shouldn't be in it. As much as we want to do for the railroad retirees and for all of those who have joined in a rather mass number of Senators who want to see this happen—that is, passage of the bill—they actually should join in saying we want to do this. But we want to be honest with the American people in terms of what the bill costs and how you should score the actual costs against the Treasury.

My amendment would strike what we call directed scorekeeping language out of section 105. This technical language inserted just before the House passed the bill instructs the Office of Management and Budget to deviate—let me go slow here so everybody will get it—from the standard accounting practice when implementing this bill.

The Congressional Budget Office estimates that the provision allowing private investment in equities would increase outlays by $15.3 billion in 2002. That means, if you follow the way we do things in a normal manner pursuant to the rules and guidelines in the law, this bill adds $15.3 billion in increased outlays.

That is a matter of the Congressional Budget Office doing its work and telling us the answer when they are asked

the question, How much does the bill cost? What do you put on the books of the United States?

They did their work. Now this bill, at the last minute, deviates from the standard accounting to the extent of $15.3 billion.

If my amendment is agreed to, which strikes the language permitting the deviation and permitting the violation of the Congressional Budget Office, it does nothing, except it puts before us the reality, the truth. It doesn't cause the bill to be any more or any less in conformance with the rules and the Congressional Budget Office. It doesn't make the bill subject to a point of order. It is already subject to that. That has nothing to do with this amendment that I am offering to clarify and make consistent this bill, and make it consistent with what we ought to do in following the language and process and past procedures with reference to the estimated cost.

Once again, the Congressional Budget Office estimates that the provision allowing private investment in equities would increase outlays by $15.3 billion in 2002. It doesn't say you can't do it. It doesn't say you shouldn't do it. It just says if you do it, report it. Just put it in here. Ask the Congressional Budget Office and report their answer. Don't ask the Congressional Budget Office and then say, regardless of their answer, which we are supposed to follow, we are going to determine and declare that we are not going to follow it.

That is called directed scoring—telling them how to score things contrary to the rules, contrary to reality, and contrary to the way we have been doing it.

That is pathetic. We shouldn't do that on any bill.

I repeat that it does not kill the bill. It does not damage the bill. It just reports the reality of the bill for bookkeeping and scorekeeping, which I believe the American people want. They don't want one bill, as good as it is, to have inserted in it just before it passes the House language saying that whatever the reality and the truth is, don't report it this time for this bill. Just report it another way.

All I do is strike that language saying report it that way. It is a very simple idea. It is simple to understand. Just take that language out, return it to language which an ordinary, everyday bill of this type would have had in it and should be expected to be part of what we do.

By preventing the OMB from reporting that expenditure as an outlay, this, in fact, deviates from; it distorts. It makes us look at something and say it isn't what it is. That is a good way to say it. We just put language in saying no matter what it is, it isn't. I am saying no matter what it is, it is, in taking out the language that would do the contrary.

The Government has always recorded any investment from equities to research and development and to education and training as an outlay. The Government should get a good rate of return on all types of investments. In contrast to private sector accounting, we record these investments as an expenditure because the Government operates under cash accounting rules. We certainly cannot use that fact as a reason for changing it. If we are going to choose to change that system of accounting, we shouldn't do it selectively for one bill, no matter how good the bill is, and no matter how much support it has. You ought to change the whole system after a thoughtful evaluation of whether we should continue to use that kind of an approach.

I will not go into the reasons why the Federal Government uses the cash accounting system instead of an accrual accounting system. But I will say that the Federal Government has operated under cash accounting rules since 1789, the first year Congress appropriated $639,000 to cover the expenses of our new government. This isn't the time to change the rules. Obviously, it is neither the time, nor the bill. It is a bill with great support. I am going to support it. It seems to have huge support. We will get it done, but we ought not choose the bill to change the rules of accounting that have existed for our Government since 1789, the first time Congress appropriated $639,000 as our expenditure.

We know, from example, in the private sector that bending the accounting rules creates confusion for the same reason we should not bend the accounting rules of the Federal Government to suit our purpose. Doing so reduces transparency and misleads the public.

If my amendment is not agreed to, this bill will set a troubling precedent for Social Security. Under current accounting practices, both the Government and the privately controlled investments of Social Security funds in stocks are treated consistently. They would increase outlays. If Government-controlled investments were not reported as outlay proposals to collectively invest in Social Security, the assets would have a significant advantage over proposals to create individual accounts. I don't think that should be done. Certainly we wouldn't want to use this as a precedent for that.

That is one of the problems when you violate precedent and pluck something out and say, we are not going to use it now, for whatever reason. We would rather not show the accounting as it is or for real.

Specifically, the proposals to have the Government invest in Social Security assets would be free, whereas proposals to establish individual accounts would cost trillions of dollars.

We understand that is not justified. This bill should not be used as something that gives impetus to that conclusion in a completely different area of huge confusion.

Regardless of whether you support individual accounts for Social Security, as the President's commission is about to propose, or collective investments such as President Clinton proposed, it doesn't make much sense for budget rules to save one policy over another. That is why I think we should be consistent, and do what is right.

Finally, the directed scorekeeping language in the bill creates a 306 budget point of order against the entire Railroad Retirement Act.

The point of order prevents Congress from changing the budget rules unless the proposal is reported from the Budget Committee. My amendment, by dropping the directed scorekeeping language, will ensure that we follow the right accounting proposals.

But understand, I do not make a point of order. There are plenty of votes for this bill. But I think plenty of those votes ought to be used to correct the accounting so there is no black mark that follows this bill around as to why did we have to do that. We do not have to do that. We just do not have to do it.

At the point it went through the House, maybe it was some way to affect the cost and make it easier to get through because we were not going to charge so much against the surplus of the country. All of those kinds of problems have long gone away. As the occupant of the chair knows, we have been spending the surplus for many months. All of the spending that took place on behalf of the New York incident was out of the surplus there. We began to break the bank, so to speak.

So if there was some reason to manage or distort the real cost, it does not exist any longer. In fact, we should not have done it anyway. But if that was the reason, it is not needed and we ought to fix it. That one change will not kill this bill. It has nothing to do with the life. Whether it is good or not so good, this action just gets rid of something that puts a little black mark or maybe even a big black mark on this bill as seeking some superattention by way of the budget rules that follow this.

That is all I have to say. But I note the presence of the chairman of the Budget Committee in this Chamber. From my standpoint, I am ready to proceed. But I do not want to cut anybody out of either joining me as a cosponsor or speaking.

So with that, I make a parliamentary inquiry. Was there a certain amount of time allocated to the Senator from New Mexico for this amendment?

The PRESIDING OFFICER. Under cloture, the Senator is limited to 1 hour. The Senator has consumed about 14 minutes.

Mr. DOMENICI. I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The majority whip.

Mr. REID. Mr. President, Senator INHOFE tried to arrange some time last week to speak when we had lots of time. The time is a little more constrained today, but he has always been

so easy to work with, and I ask unanimous consent that following my remarks and those of Senator CONRAD, the Senator from Oklahoma be recognized for up to 40 minutes. Of course, the time would be charged against the 30 hours.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. REID. Mr. President, for me to speak against Senator DOMENICI and Senator CONRAD is difficult. I work very closely with Senator DOMENICI. We have been on the Appropriations Committee working side by side on a number of issues, including the Energy and Water Development Subcommittee, of which I have been chairman and he has been chairman, back and forth. Of course, Senator CONRAD and I came to the Senate together. There is no one I have more respect for than Senator CONRAD and for his integrity and his absolute brilliance. So for me to speak against something on which they agree is difficult. But as much respect as I have for both of these outstanding men, it does not mean they are always right. I respectfully submit that what they are trying to accomplish now is wrong.

Leave it in the bill is basically what my message is. I know I speak for the chairman of the Finance Committee, Senator BAUCUS, and I know I speak for the majority leader, Senator DASCHLE, when I say this.

The House-passed bill includes directed scorekeeping language. This language would require the CBO and OMB to treat the purchase of private sector securities by the new railroad retirement trust as a means of financing rather than as an outlay. OMB sets the official rules right now. Under those rules, the purchase of private sector securities is scored as an outlay just as any other purchase of goods and services would be scored.

However, the issue of how to score the purchase of private sector securities is really a very gray area. Unlike the purchase of goods and services, the purchase of private sector securities does not diminish the financial and budgetary wealth of the Government. So a case could be made that these purchases should not be scored as outlays. In such a case, a means of financing Federal deficits is a technical term for the budgetary category of the purchases. The primary means of financing Federal deficits historically has been Federal borrowing.

Those who would like to continue the current OMB scoring rules would argue that almost all the Federal budget is on a cash basis. From that perspective, the purchase of private sector securities requires cash and should be treated the same as any purchase of goods and services.

I do not have an opinion as to which is the best approach, which is superior. I think they both work. However, from a pragmatic point of view—and that is where I am today—this legislative session is winding down. We are facing a serious time constraint if we are going to be able to enact this important legislation this year.

The railroads have been working and trying to get something such as this done for decades. For once, now we have victory in our grasp. The railroad companies and the unions, which rarely agree on the time of day, have agreed on this package. I think it is a victory that we should not let fall from our grasp.

If this amendment passes, it is gone. Everyone should understand, it is gone. Why? Because this bill will not pass this year.

There are very few days left in the calendar. The House has already passed this legislation, the legislation that is basically before us, that includes directed scorekeeping, by a vote of 384 to 33. It was not a close call in the House: 384 to 33.

If we pass a bill that does not have directed scorekeeping, then we face one of three scenarios. No. 1, we have to go to conference. If this happens, curtains this year, this legislation is all through. No. 2, the House could send back our bill with an amendment in disagreement. In that case, there would not be enough time on the Senate floor to deal with this possibility. No. 3, the House could agree with our bill.

Under two of the three outcomes, the bill would not be enacted this year. We do not know which of the three outcomes will occur, but I have an idea. It is just too risky to proceed in this way. The prudent course of action is to leave the directed scorekeeping language in this bill, the legislation before us.

I urge my colleagues to defeat this amendment.

Mr. President, we have come a long way to arrive at a point where we actually have in our grasp this bill on which we can vote. I hope this amendment, while well intentioned by two fine Senators, both of whom want to protect their budget jurisdiction—I just think, in this instance, they are wrong. I think it would be much better if we went through with this legislation, followed the lead of the House.

The House, as I indicated, passed this bill overwhelmingly. I think if we did that, we would have a lot of happy widows, we would have a lot of happy railroad retirees; of course, we would have a railroad industry that would be much stronger and firmer.

I know in Nevada we have watched the railroads come through our State. We had a merger of Union Pacific coming through the northern part of the State on very shaky ground. But they were able to pull themselves out. We have done a number of remarkable things with the railroad to help them move more traffic because of the merger. One example is that they have come forward and we are building a depressed railroad sector through Reno to make it a much better, quieter program than we have had with railroads in the entire history of railroads coming through Nevada. All this amendment will do is set that back, and then many other things we have been able to accomplish. But of course the thing that really hurts has to do with the railroad retirees.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise today to support the amendment of the Senator from New Mexico, the distinguished ranking member of the Budget Committee. I ask unanimous consent to be added as a cosponsor to his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. CONRAD. I am happy to yield.

Mr. DOMENICI. Mr. President, I thank Senator CONRAD. As chairman of the Budget Committee, it is really welcome that he would join me in this endeavor.

As a matter of fact, I believe by his joining, he makes the case that we are not trying to kill this bill. He has been a staunch advocate. I just told railroad retirees I am voting for the bill. I didn't tell them, nor did I tell the Senator, that I used to work for the railroad. I was a baggage clerk when I was 22. It was a fun job. I didn't work long enough to be part of any of this program. I want everybody to know, I have no interest. It was a great summer job. I became friends with some wonderful railroaders.

I repeat, so that nobody misunderstands the Senator's views, this takes out of the bill some language that is not needed for this bill and that in essence treats this bill in a way that says what is isn't; it is going to cost this much, but it is not going to cost it because we wrote language in the bill saying it isn't.

That is not the way to pass a bill. We don't do that for anybody on anything.

I welcome the Senator's support. I think it is a good way for him to start his chairmanship, saying that he is going to watch the rules carefully and abide by them. I thank the Senator so much for joining me.

(Mrs. CARNAHAN assumed the chair.)

Mr. CONRAD. I thank the Senator. My great-grandfather was a foreman on the railroad. My great-grandparents, when they went on their honeymoon, went on a pushcart for 100 miles on the railroad.

I do strongly favor this bill. I have to answer to my responsibility as chairman of the Budget Committee and as a Member of this body to be accurate with our colleagues as to the scoring of this legislation.

Directed scoring, if we are to be blunt about it, is to say something doesn't cost when we know that it does. I have an obligation to my colleagues to report accurately to them this legislation. I have been a staunch supporter of this bill the entire time it

has been before the Senate. It represents an extraordinary effort by the rail companies and their employees and labor to work together to improve the lives of thousands and thousands of rail workers and their families.

I agree this legislation provides an important opportunity to modernize the rail pension program. I have received countless e-mails, phone calls, faxes, and letters from North Dakota rail workers and their spouses who have told me how important this legislation is to them and their families.

Some of my dearest friends and strongest supporters are in favor of this legislation. I am in favor of the legislation. But I have a special responsibility as chairman of the Budget Committee to give an accurate assessment to our colleagues of the cost of legislation that moves through this Chamber. That is an obligation I take seriously.

The directed scorekeeping provision creates the impression that the cost of this legislation in fiscal year 2002 has dropped from $16 billion to $250 million. In reality, with or without directed scorekeeping, the impact on the budget in 2002 is precisely the same. It is not $250 million; it is $16 billion.

That is the reality. That is the fact. With this amendment, the Senator from New Mexico has provided us with a second chance to review the directed scorekeeping provision of this bill. He is right to do so. That is why I have joined him in this effort.

Traditionally, those of us with special responsibility for the budget have vigorously opposed directed scorekeeping because it fundamentally undercuts the entire system of budget controls and budget discipline that is so important to the United States being fiscally prudent and wise. We cannot do our job of being stewards of the finances of this country if we don't report accurately and honestly to our colleagues the cost of legislation.

That is the most fundamental responsibility of any Budget Committee chairman and ranking member. Senator DOMENICI and I are meeting our responsibility by saying to our colleagues the simple fact is, this bill is going to cost $16 billion in fiscal year 2002 no matter what the directed scorekeeping provision says. You can make it up, but it is not true. The fact is, the impact on the federal budget will be $16 billion.

That is a cost for which I am willing to vote and support, but I am not willing to say it is something it is not. That is not, in my view, the appropriate role for any Budget Committee chairman.

It is not just a matter of $16 billion in fiscal year 2002; it has much greater significance than that. If we establish the precedent that through directed scorekeeping we can say a $16 billion expense is really a $250 million expense, what is next? I predict what is next is: When we get to the reform of Social Security, some will say we can simply take a trillion dollars of the Social Security trust fund and move it over into private accounts and say there has been no expenditure. That is the implication of this vote and why it matters. If we say on this bill you can take something that cost $16 billion and, by legislative language, direct the scorekeeping and say it doesn't cost $16 billion, it costs $250 million, then others may try to take a $1 trillion transfer of Social Security money and say it is cost free.

If we start down that path, we will rue the day, if we go down the path of creating fiscal fictions in this Chamber in order to accomplish even the best of intentions.

This is a good bill. It is worthy of support. But the price cannot be, should not be, must not be that we say to the American people that a bill that costs $16 billion only costs $250 million. That cannot be the way we do business in the Senate.

If that is the direction we take, I repeat to my colleagues the implication because I believe the next step will be in the Social Security reform debate, that others will try to say: A trillion dollars taken out of the Social Security trust fund and moved into private accounts doesn't cost anything. It is cost free.

That would not be true. That would be totally misleading. The money that is in the Social Security trust fund that has been credited to the Social Security trust fund, to be more accurate, has been credited to that fund to meet current promises, promises already made. We can't take that money and make a new set of promises and use the money that was raised to keep the previous promises. It won't work. We can't use the same money twice.

You can't use the same money twice. That is what will lead us into the swamp of deficits and debt and disastrous economic decline. Make no mistake, what is at stake here is a big deal. This matters. This is not a free vote. I remain committed to this legislation, but I also remain committed to being straight with our colleagues and our countrymen as to the cost of the legislation that is before us.

Our friends in the House included this directed scorekeeping back in July. It was a mistake then; it would be a mistake for us to repeat it here. Those who say, well, this kills the bill —I don't accept that. This legislation has to go back for further action in the House in any event because of the way it has come before us. It has to go back to the House for action in any event.

Let's pass this legislation, but let's do it right and let's do it by being straight with our colleagues and our countrymen as to its cost.

Mr. CARPER. Will the Senator from North Dakota yield?

Mr. CONRAD. I am happy to yield.

Mr. CARPER. I, too, am a strong advocate of this legislation. I have spoken for it in the Chamber and in our caucus meetings as well. As the Senator from North Dakota and the Senator from New Mexico have indicated about their relatives, my grandfather was also on the railroad. My grandmother lived many years on a survivor's pension from his service. Whenever the chairman of the Budget Committee and the ranking member on the Budget Committee stand to endorse an amendment, it gives me pause. I want to make sure in the next several minutes—maybe hours—that we consider this legislation I understand the full ramifications of the amendment or the failure to adopt the amendment.

Let me ask the chairman of the Budget Committee this. When I first learned of the directed scorekeeping in the House of Representatives, which, as he said, is an extraordinary act, I tried to understand why they may have done that. Was it chicanery or was there real logic behind it?

As I studied the issue more, my understanding is if we were not on a cash basis of accounting, but an accrual basis, this probably would not be an issue. Most States used to be on a cash basis of accounting. The majority of States now use the accrual basis, and most States direct the retirement funds into U.S. Treasury obligations. Today, it is a whole array of investments, including equities, or stocks, bonds, and the kinds of things envisioned here under this legislation. There are, as we know, tier 1 benefits under the railroad and tier 2.

This is my question: The tier 1 benefits mirror Social Security benefits. Tier 2 are more private sector benefits. The moneys that go into those tier 2 funds for payout come from the railroad companies themselves—from the tax assessed on them—and also a payment by the railroad employees themselves. My understanding is that those monies that go into that retirement fund, paid into by the railroad companies and by the employees through the payroll deduction—those monies in the future will be invested not in U.S. Treasury obligations, but in a wide variety of investment options. But because of the peculiarity of our accounting rules, because those monies will now be not spent for roads or any other purpose, and not for space exploration, they will still be invested in the same pension benefits, but because of our accounting rules, those monies—simply by saying you can now invest those pension monies, the trust fund monies, in non-Treasury obligations triggers a $15 billion outlay. Is that what this is all about? I know that is a long question, but let me lay that question at the feet of our Budget Committee chairman.

Mr. CONRAD. I am happy to respond. First of all, we use a cash method of accounting for the Federal budget. We do not use an accrual system. You can't mix the two or you start misleading people. That is No. 1.

No. 2, the Senator's question sounds as though it is prospective in nature; as though simply going forward, Tier II

revenues would not be invested in Treasurys. That is not the case in this bill. In this bill, CBO estimates that approximately $16 billion currently invested in Treasurys by the Federal Government would be sold and instead invested through an investment trust in private-sector assets. Again, the amount is $16 billion and they would be free to invest it in other ways. I support that.

But we have to be straight with people. It costs $16 billion to the Federal Government in the fiscal year 2002 under the accounting rules that apply to every program of the Federal Government. It doesn't cost $250 million; it costs $16 billion. The money moves out of Government Treasuries and moves into a railroad investment trust, with the ability under a board, to invest those moneys in higher rate of return assets. I support that basic notion.

But the hard fact is that it costs the Federal Government $16 billion. It means the fact is the Federal Government will have to borrow $16 billion more in fiscal year 2002 than it was otherwise going to borrow.

Mr. CARPER. If the Senator will continue to yield, I have two glasses of water here. We will say one is the railroad pension fund as it currently exists, and it is full of U.S. Treasury obligations. There is another glass here and we will pretend it is empty for our purposes. What I think we are talking about doing is taking some of the moneys invested in these Treasury obligations in this one pension fund and, presumably, the railroad retirement fund would have to sell those obligations and then use the money from the sale of those obligations to put in their new pension fund. When they sell those, they are going to sell them to somebody—individuals, funds, banks, corporations. It is difficult for me to understand how that transaction I have just described should cost the Treasury $16 billion. A lot of us are struggling on this one.

Mr. CONRAD. Let me say it as simply as I can state it. The reason it costs the U.S. Treasury $16 billion is because the money moves out of U.S. Government Treasurys and moves over to the control of a board that is run by private sector representatives to be invested in non-governmental assets. That is about as easy as I can make it.

The fact is that the Federal Government is going to have to borrow, as a result of that transaction, not $250 million more, but $16 billion more in 2002. For us to have our colleagues say ''but it really doesn't mean that'' is not accurate and it is not factual. To say to our colleagues, by direct scorekeeping, by legislative fiat, that it won't cost $16 billion, that it won't mean the Federal Government has to borrow $16 billion more in 2002, that it is only going to cost $250 million more, is just not the truth. I don't know how more direct I can be.

Mr. CARPER. I thank the Senator.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that following the statement of Senator INHOFE, Senator STABENOW be recognized for up to 15 minutes, and the time be charged against the 30 hours.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senator from Oklahoma is recognized for 40 minutes.

AN ABSOLUTE VICTORY

Mr. INHOFE. I thank the Chair. First, I say to the leadership how much I appreciate the fact you are allowing me to bust in on a different subject. I think it is very significant at this time because something happened yesterday that I think makes it worthwhile to talk about this and maybe to do so at some length.

Willie George was right. Lest some of you do not know who Willie George is, some people consider Willie George a preacher, but he is also a very able historian. As I listened to him and added some perspectives on what the attack on America was all about, I realized the inside-Washington mentality is sometimes and often flawed and that mentality that comes from Oklahoma reflects more of real America.

The Apostle Paul gave us our marching orders in Ephesians 6, verses 10, 11, and 12. He said:

> Finally, my brethren, be strong in the Lord, and in the power of his might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we wrestling is not against flesh and blood, but against the principalities, against the powers, against the rulers of this darkness—

About which we are talking—

> against the spiritual hosts of wickedness in high places.

Make no mistake about it. This war is first and foremost a spiritual war. It is not a political war. It has never been a political war. It is not about politics. It is a spiritual war. It has its roots in spiritual conflict. It is a war to be fought to destroy the very fabric of our society and the very things for which we stand.

Many of the wars in history have been fought because of human desire or greed, to have that of a neighboring country—to have mineral deposits, to have what some other country has. But this war is of a different nature.

It is not just simple greed that motivated these people to kill. This war has been launched against the United States of America. It is a spiritual attack. It is an attack that was created in the mind and heart of Satan. It is a demonically inspired attack. It is not just the selfish ambitions of an egotistical leader. It is not just someone wanting to hold on to power. This is nothing more than a satanically inspired attack against America created by demonic powers through the perverted minds of terrorists.

One may ask: What is it about our Nation that makes them hate us so much? Three things. First, in our country, we have the freedom and the right to choose the kind of worship we want. I am a born-again Christian. I have accepted Jesus Christ as my virtual Lord and Savior. I believe it is through Him that we will reach the Father. I believe every American has a right to choose whether or not to believe that.

Some people have the notion that if you are a Christian who believes in the Bible, you are totally intolerant; you do not allow other people to have a choice. Nothing could be further from the truth.

In nations of this world where Christianity is the dominant way of worship, we also find Jewish synagogues, Islamic mosques; we find freedom of worship. But we will not find the same kinds of freedom in the militant Islamic nations of this world. They do not allow Christian churches and Jewish synagogues to operate freely. They do not allow people the freedom of choice. In Sudan, they sell Christians into slavery.

So one of the reasons America is hated so much is that we have allowed people through the years to choose what they are going to do. It is choice.

The second reason we are hated is that we have opened the door for people to achieve their God-given place on this Earth. We have not restrained people. We have allowed people freedom of expression, the freedom to pursue dreams, the freedom to pursue goals. This is not true around the world.

Freedom did not come cheap. One of my memories that I consider an advantage for me and that I hold over many others is when I first started my education in first grade, it was in a country schoolhouse. Not many people here know what they are. They are eight grades in one room out in the country. It was called Hazel Dell. In fact, I remember three brothers who rode on a workhorse to school every morning.

We had a different sense of history at that time. I remember so well reading and learning history as a very young child in that environment. Keep in mind, that was the environment at the beginning of World War II when we had a sense of patriotism that is comparable to today.

I remember my teacher said the Pilgrims did not come to this country for adventure; they did not come for excitement; they were not adventurous people. They came to this country to escape tyranny, to pursue freedoms—freedom of religion and economic freedom. Half of them died the first year. They knew it was going to happen. It was worth it to get these freedoms.

They had freedom of religion and economic freedom. Each was given a piece of property to do with as they wanted, and he could work his land and reap the benefits of this property. And he prospered mightily, so mightily that in one of his letters back to England, Smith said: Now one farmer can grow 10 times as much corn as the previous farmers could.

They were prospering so mightily. I normally tell young people when you have a good thing going, quite often someone is going to try to take it away from you. That is exactly what happened. The British came across the sea. They wanted in on this prosperity, and they started imposing laws, rules, and regulations so that the trapper on the frontier could not make a hat of the pelt he caught. He had to sell it to British merchants at British prices to be shipped to Great Britain on English ships to be made into a hat by English laborers to be shipped back and sold to the trapper, who caught it in the first place, at English prices. Guess what happened. God bless him, the trapper kept right on making his own hats.

That was treason in those days. So they sent this great army to this country, the greatest army in the world at that time, to stop these things from occurring. They started marching up toward Lexington and Concord.

I remember so well sitting in that little one-room schoolhouse and having this vision of what it was really like. Farmers and trappers and frontiersmen were up there. They were not well educated, but they were ready to stop this resistance, the greatest army on the face of this Earth. Most of them could not read or write. As the saying goes, they did not know their right foot from their left foot, so they would put a tuft of hay in one boot and a tuft of straw in the other boot and marched to the cadence of ''hay foot, straw foot.''

While they were not greatly educated, they knew freedom, and they were going to keep that freedom. As they stood there knowing they were signing their death warrants, those soldiers, listening to the thundering cadence of the largest army in the world going towards Lexington and Concord, waited until they saw the whites of their eyes and fired the shot heard round the world, not knowing at that very moment a tall redhead stood in the House of Burgess and made a speech for them, made a speech for us today:

They tell us, sir, that we are weak; unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house? Shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? Sir, we are not weak if we make proper use of those means which the God of nature hath placed in our power. The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us.

This is critical.

Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles with us. The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave . . . Gentlemen may cry, Peace, Peace—but there is no peace . . . Why stand we here idle? What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God . . . but as for me, give me liberty or give me death.

He got both.

These freedoms are not found in every nation. America is a great nation because we have magnified the rights of individuals, protected the rights of individuals in our culture. We are careful to allow people to have expression in our society, and we are hated for it.

The third reason we are hated is because we are a nation of laws. We are a people ruled by laws. Lest one thinks that is common, do a careful study of the history of the world. Most of the world's countries do not have a 200-year-old Constitution. They are ruled by dictators. They are ruled by the whims of those leaders or by political parties as they change. The rule of law is what makes civilization possible. The rule of law is what makes an orderly society work. If there is no rule of law, the strongest, toughest bully is the one who runs the country.

America is a country of law and order because of the philosophies of the people who founded this Nation. They believed in the rule of law because of what they knew from the Bible. Our Constitution and the constitutions of most of the governments in the world are similar and are indeed based upon the Ten Commandments. Our fathers knew that the Ten Commandments and the laws of God were a basis for all laws. They understood the concepts of absolute right and absolute wrong. There were not many who believed in what we today call situational ethics where things change according to our needs. They believed in absolute right and absolute wrong. America was founded on those principles. That is a reason we are hated so much as a nation. We are hated because of the fact we are a beacon of light, a beacon of freedom all the way around the world. We know contemporarily what this means.

One of the greatest speeches of all times was ''A Rendezvous with Destiny'' made by Ronald Reagan before he was into politics. He talked about the atrocities committed in Castro's Communist Cuba and about the little boat that escaped and washed up on the southern shores of Florida. When the boat came up, a man who escaped talked about what was happening in Communist Cuba. When he was through talking about the atrocities, a woman said: I guess we in this country don't know how lucky we are.

He said: No, no. It is how lucky we are because we had a place to escape to.

What he was saying was, we were that beacon of freedom. Many, including the Senator sitting to my right, will remember 15 years ago when the Communists, then the Soviet Union, were trying to get a foothold in Nicaragua and the freedom fighters were fighting for their freedom. I remember going down there, watching them fight against impossible odds. There is no way they could win, by normal concept. They were fighting.

There was a hospital tent in Nicaragua. It was half the size of this Senate Chamber. I remember so well, this is where the freedom fighters from Nicaragua would come in and get taken care of medically. There was an operating table in the middle of this giant tent. All they did was amputations. The problem was, of course, the mines. They had the beds of all the patients around the perimeter of this hospital tent.

I went around and talked to the individuals. The average age of the fighter in Nicaragua at that time was 19 years old. All the older ones were either maimed or killed. I used to be a pilot in Mexico and I communicate well.

I asked each one: Why is it you are doing this against impossible odds? Why are you doing this? Why are you fighting?

I got to the last bed. Her name was Maria Gonzalez. I asked her that question. She was 18 years old, weighed 90 pounds, and this was her third trip back to the hospital tent. They amputated her leg that morning. Blood was coming through the bandages. That little girl said: We are fighting because they have taken everything we have, our farms, our houses, all that we have. Surely you in the United States don't have to ask that question because you had to fight for your freedoms against the same odds that we are doing today. And with God's help, we will win, as you, with God's help, won.

That little girl didn't know whether our Revolution was fought 25 years ago or 150 years ago. But she was brilliant in her knowledge of freedom. We were the beacon of hope. We were the beacon of freedom.

Do you know the outcome? We are hated because we are the beacon of freedom for the rest of the world. We are hated because in America we have freedom of choice and freedom of worship, we have freedom of expression, and we are a nation of laws.

Now, why was America attacked on September 11? Why did they single us out? America was attacked because of our system of values. It is a spiritual war. It is not just because we are Israel's best friend. We are Israel's best friend in the world because of the character we have as a nation. We came under attack and we are Israel's best friend.

One of the reasons God has blessed our country is because we have honored his people. Genesis 12:3 says: I will bless them who bless you. I will curse him who curses you. This is God talking about Israel.

Madam President, on the table where you sit is a Bible. You can look it up. He said: I will bless them who bless you. I will curse him who curses you. God is talking about Israel.

One of the reasons America has been blessed abundantly over the years is

because we as a society have opened our doors to Jewish people. Jewish people have been blessed in the United States of America. When the tiny State of Israel was founded in 1948, we stood in the beginning with Israel. We were the first country to stand up for Israel. Because we took a stand, other nations in the world followed after very quickly. The United States made it possible for there to be an Israel. We stood with Israel again and again and again in its fight to survive.

Make no mistake. It is not just because of our support of Israel. It is what we believe as a nation that caused us to come under attack.

Recently in the city of Durban, South Africa, there was a conference called the World Conference on Racism. African Christians are being slaughtered by the thousands today by Islamic fundamentalists in Sudan. You didn't hear a lot about that in the reports of this conference; you didn't hear about racism in South Africa. I have a mission in west Africa and have become pretty familiar with some of the atrocities and the ethnic cleansing going on in the world today.

I can remember standing at this podium when we were under a different President. He was trying to get us to send troops into Kosovo, and used in his arguments in Kosovo all the ethnic cleansing and the difficulty going on. I said at that time, for every one person who is killed, who is ethnically cleansed in Kosovo, on any given day there are over 100 who are killed and ethnically cleansed in west Africa alone. Do we hear about that? No, we didn't hear about that at the Conference on Racism. What you heard was how the nations of the world came together and decided all the attention should be focused on the tensions in the Middle East. They were appeasing the terrorists.

Israel is under attack in the Middle East because it is the only true democracy that exists in the Middle East. There are more than 20 Arab nations in north Africa and in the Middle East. Virtually every Arab nation is run by either a king or a dictator. Israel is the only true democracy that exists in the Middle East.

Madam President, did you know if you are an Arab and have an Israeli citizenship, you can vote in the country of Israel? Did you know the Arabs have parties in the Knesset, the Congress of Israel? Israel is the only true democracy that exists in the Middle East. It has a Western form of government based on the laws we see in the Bible. The laws of God that our country is based on are the same laws from which Israel gets its law. It represents the laws of God. That is the reason it is under attack.

We ought to be Israel's best friend. If we cannot stand for Israel today, can we ever again be counted on as a beacon of hope, a beacon of freedom for oppressed nations? You may ask what does this have to do with the attack on America? We are under attack because of our character and because we have supported the tiny little nation in the Middle East. That is why we are under attack. If we don't stand for this tiny country today, when do we start standing for tiny little countries in the world that are right?

Yasser Arafat and others do not recognize Israel's right to the land. They don't recognize Israel's right to exist.

I will discuss seven things I consider to be indisputable and incontrovertible evidence and grounds to Israel's right to the land. You have heard this before, but it has never been in the RECORD. Most know this. We are going to be hit by skeptics who are going to say we are being attacked all because of our support for Israel, and if we get out of the Middle East all of the problems will go away. That is not so. It is not true. If we withdraw, it will come to our door and will not go away. I have some observations to make about that in just a minute, but first the seven reasons that Israel has the right to the land.

Israel has a right to the land because of all the archeological evidence. This is reason No. 1. It all supports it. Every time there is a dig in Israel, it does nothing but support the fact that Israelis have had a presence there for 3,000 years. They have been there for a long time. The coins, the cities, the pottery, the culture—there are other people, groups that are there, but there is no mistaking the fact that Israelis have been present in that land for 3,000 years.

It predates any claims that other peoples in the regions may have. The ancient Philistines are extinct. Many other ancient peoples are extinct. They do not have the unbroken line to this date that the Israelis have.

Even the Egyptians of today are not racial Egyptians of 2,000, 3,000 years ago. They are primarily an Arab people. The land is called Egypt but they are not the same racial and ethnic stock as the old Egyptians of the ancient world. The Israelis are in fact descended from the original Israelites. The first proof, then, is the archeology.

The second proof of Israel's right to the land is the historic right. History supports it totally and completely. We know there has been an Israel up until the time of the Roman Empire. The Romans conquered the land. Israel had no homeland, although Jews were allowed to live there. They were driven from the land in two dispersions: One was in 70 A.D. and the other was in 135 A.D. But there was always a Jewish presence in the land.

The Turks, who took over about 700 years ago and ruled the land up until about World War I, had control. Then the land was conquered by the British. The Turks entered World War I on the side of Germany. The British knew they had to do something to punish Turkey and also to break up that empire that was going to be a part of the whole effort of Germany in World War I, so the British sent troops against the Turks in the Holy Land.

One of the generals who was leading the British armies was a man named Allenby. Allenby was a Bible-believing Christian. He carried a Bible with him everywhere he went and he knew the significance of Jerusalem.

The night before the attack against Jerusalem to drive out the Turks, Allenby prayed that God would allow him to capture the city without doing damage to the holy places.

That day, Allenby sent World War I biplanes over the city of Jerusalem to do a reconnaissance mission. You have to understand that the Turks had at that time never seen an airplane. So there they were, flying around. They looked in the sky and saw these fascinating inventions and did not know what they were and they were terrified by them. Then they were told that they were being opposed by a man named Allenby the next day, which in their language means ''man sent from God'' or ''prophet from God.'' They dared not fight against a prophet from God, so the next morning when Allenby went to take Jerusalem, he went in and captured it without firing a single shot.

The British Government was grateful to Jewish people around the world and particularly to one Jewish chemist who helped them with the manufacture of niter. Niter is an ingredient which goes into nitroglycerin, necessary to the war effort. They were getting dangerously low of niter in England at that time, so the chemist, who was called Weitzman, discovered a way to make it from materials that existed in England.

It was coming from the new world over there, the niter was. But the German U-boats were shooting them down so it was all at the bottom of the Atlantic Ocean. When Weitzman discovered a way to make it from materials that existed in England, it saved the British war effort. Out of gratitude to this Jew and out of gratitude to Jewish bankers and financiers and others who lent financial support, England said we are going to set aside a homeland in the Middle East for the Jewish people. And that is history.

The homeland that Britain said it would set aside consisted of all of what is now Israel and all of what was then the nation of Jordan, the whole thing. That was what Britain promised to give the Jews in 1917.

In the beginning, there was some Arab support for this. There was not a huge Arab population in the land at that time and there is a reason for that. The land was not able to sustain a large population of people. It just didn't have the development it needed to handle all those people, and the land wasn't really wanted by anybody.

I want you to listen to Mark Twain. Have you ever read ''Huckleberry Finn'' or ''Tom Sawyer''? Mark Twain—Samuel Clemens—took a tour of Palestine in 1867. This is how he described it. We are talking about Israel. He said:

A desolate country whose soil is rich enough but is given over wholly to weeds. A

silent, mournful expanse. We never saw a human being on the whole route. There was hardly a tree or a shrub anywhere. Even the olive and the cactus, those fast friends of a worthless soil, had almost deserted the country.

Where was this great Palestinian nation? It didn't exist. It wasn't there. The Palestinians weren't there. Palestine was a region named by the Romans, but at the time it was under the control of Turkey and there was no large mass of people there because the land would not support them.

This is the report of the Palestinian Royal Commission, created by the British. It quotes an account of the conditions on the coastal plain, along the Mediterranean Sea in 1913. This is the Palestinian Royal Commission. They said:

The road leading from Gaza to the north was only a summer track, suitable for transport by camels or carts. No orange groves, orchards or vineyards were to be seen until one reached the Yavnev village. Houses were mud. Schools did not exist. The western part toward the sea was almost a desert. The villages in this area were few and thinly populated. Many villages were deserted by their inhabitants.

The French author Voltaire described Palestine as:

A hopeless, dreary place.

In short, under the Turks the land suffered from neglect and low population, and that is a historical fact. The nation became populated with both Jews and Arabs because the land came to prosper when Jews came back and began to reclaim it. Historically, they began to reclaim it. If there had never been any archeological evidence at all to support the rights of the Israelis to the territory, it is also important to recognize that other nations in the area have no longstanding claim to the country either.

Madam President, did you know that Saudi Arabia was not created until 1913? Lebanon until 1920? Iraq didn't exist as a nation until 1932; Syria until 1941; the borders of Jordan were established in 1946, and Kuwait in 1961.

Any of these nations who would say that Israel is only a recent arrival would have to deny their own rights as recent arrivals as well. They did not exist as countries. They were all under the control of the Turks. So, historically, Israel gained its independence in 1948.

The third reason I believe the land belongs to Israel is because of the practical value of the Israelis being there. Israel today is a modern marvel of agriculture. Israel is able to bring more food out of a desert environment than any other country in the world. The Arab nations ought to make Israel their friend and import technology from Israel that would allow all the Middle East, not just Israel, to become an exporter of food. Israel has unarguable success in its agriculture.

The fourth reason I believe Israel has the right to the land is on the grounds of humanitarian concern. You see, there were 6 million Jews slaughtered in Europe in World War II. The persecution against the Jews has been very strong in Russia since the advent of communism. It was against them even before then under the Czars.

These people have a right to their homeland. If we are not going to allow them a homeland in the Middle East, then where? What other nation on Earth is going to cede territory? To give up land?

They are not asking for a great deal. You know the whole nation of Israel would fit into my State of Oklahoma seven times. So on humanitarian grounds alone, Israel ought to have the land.

The fifth reason Israel ought to have the land is because she is a strategic ally to the United States. Whether we realize it or not, Israel is a detriment, an impediment to certain groups hostile to democracies and hostile to those things that we believe in, hostile to the very things that make us the greatest nation in the history of the world. They have kept them from taking complete control of the Middle East. If it were not for Israel, they would overrun the region. They are our strategic ally.

Madam President, it is good to know that we have a friend in the Middle East that we can count on. They vote with us in the United Nations more than England. They vote with us more than Canada, more than France, more than Germany, more than any other country in the world.

The sixth reason is that Israel is a roadblock to terrorism. The war we are now facing is not against a sovereign nation. It is a group of terrorists who are very fluid, moving from one country to another. They are almost invisible. That is who we are fighting against. We need every ally we can get. If we do not stop terrorism in the Middle East, it will be on our shores. We have said this and said this and said this.

One of the reasons I believe the spiritual door was opened for an attack against the United States of America is because the policy of our Government has been to ask Israelis and demand with pressure that they not retaliate in a significant way against the terrorist strikes that have been launched against them, the most recent one just 2 days ago.

Since its independence in 1948, Israel has fought four wars: the war in 1948–1949; the war in 1956, the Sinai campaign; the Six-Day War in 1967; and in 1973 the Yom Kippur War, the holiest day of the year, with Egypt and Syria.

You have to understand that in all four cases, Israel was attacked. Some people may argue that wasn't true because they went in first in the war of 1956. But they knew at that time that Egypt was building a huge military to become the aggressor. Israel, in fact, was not the aggressor and has not been the aggressor in any of the four wars.

Also, they won all four wars against impossible odds. They are great warriors. They consider a level playing field being outnumbered two to one.

There were 39 Scud missiles that landed on Israeli soil during the gulf war. Our President asked Israel not to respond. In order to have the Arab nations on board, we asked Israel not even to participate in the war. They showed tremendous restraint and did not. And now we've asked them to stand back and not do anything over these last several attacks.

We have criticized them. We have criticized them in our media. Local people in television and radio offer criticisms of Israel not knowing the true issues. We need to be informed.

I was so thrilled when I heard a reporter pose a question to our Secretary of State, Colin Powell. He said, ''Mr. Powell, the United States has advocated a policy of restraint in the Middle East. We have discouraged Israel from retaliation again and again, and again because we've said it leads to continued escalation—that it escalates the violence.'' He said, ''Are we going to follow that preaching ourselves?''

Mr. Powell indicated that we would strike back. In other words, we can tell Israel not to do it, but when it hits us we are going to do something. That is one of the reasons I believe the door was opened. Because we have held back our tiny little friend. We have not allowed them to go to the heart of the problem. The heart of the problem—that is where we are going now.

But all that changed yesterday when the Israelis went into the Gaza with gunships and into the West Bank with F–16s. With the exception of last May, the Israelis had not used F–16s since the 1967 7-Day War. And I am so proud of them because we have to stop terrorism. It is not going to go away. If Israel were driven into the sea tomorrow, if every Jew in the Middle East were killed, terrorism would not end. You know that in your heart. Terrorism would continue.

It is not just a matter of Israel in the Middle East. It is the heart of the very people who are perpetrating this stuff. Should they be successful in overrunning Israel—they won't be—but should they be, it would not be enough. They will never be satisfied.

No. 7, I believe very strongly that we ought to support Israel; that it has a right to the land. This is the most important reason: Because God said so. As I said a minute ago, look it up in the book of Genesis.

In Genesis 13:14–17, the Bible says:

The Lord said to Abram, ''Lift up now your eyes, and look from the place where you are northward, and southward, and eastward and westward: for all the land which you see, to you will I give it, and to your seed forever. . . . Arise, walk through the land in the length of it and in the breadth of it; for I will give it to thee.''

That is God talking.

The Bible says that Abram removed his tent, and came and dwelt in the plain of Mamre, which is in Hebron, and built there an altar before the Lord. Hebron is in the West Bank. It is at this place where God appeared to

Abram and said, ''I am giving you this land,''—the West Bank.

This is not a political battle at all. It is a contest over whether or not the word of God is true. The seven reasons here, I am convinced, clearly establish that Israel has a right to the land.

Eight years ago on the lawn of the White House, Yitzhak Rabin shook hands with PLO Chairman, Yasser Arafat. It was a historic occasion. It was a tragic occasion.

At that time, the official policy of the Government of Israel began to be, ''Let us appease the terrorists. Let us begin to trade the land for peace.'' This process has continued unabated up until last year. Here in our own Nation, at Camp David, in the summer of 2000, then Prime Minister of Israel, Ehud Barak, offered the most generous concessions to Yasser Arafat that had ever been laid on the table.

He offered him more than 90 percent of all the West Bank territory; sovereign control of it. There were some parts he did not want to offer, but in exchange for that he said he would give up land in Israel proper that the PLO was not asking for.

And he also did the unthinkable. He even spoke of dividing Jerusalem and allowing the Palestinians to have their capital there in the East. Yasser Arafat stormed out of the meeting.

Why did he storm out of the meeting? Everything he has said he has wanted all of these years was put into his hand. Why did he storm out of the meeting?

A couple of months later, there began to be riots, terrorism. The riots began when, now Prime Minister, Ariel Sharon, went to the Temple Mount. And this was used as the thing that lit the fire and that caused the explosion.

Did you know that Sharon did not go unannounced and that he contacted the Islamic authorities before he went and secured their permission and had permission to be there? It was no surprise. The response was very carefully calculated. They knew the world would not pay attention to the details.

They would portray this in the Arab world as an attack upon the holy mosque. They would portray it as an attack upon that mosque and use it as an excuse to riot. Over the last eight years, during this time of the peace process, where the Israeli public has pressured its leaders to give up land for peace because they're tired of fighting, there has been increased terror.

In fact, it has been greater in the last eight years than any other time in Israel's history. Showing restraint and giving in has not produced any kind of peace. It is so much so, that today the leftist peace movement in Israel does not exist because the people feel they were deceived.

They did offer a hand of peace, and it was not taken. That is why the politics of Israel have changed drastically over the past 12 months. The Israelis have come to see that, ''No matter what we do, these people do not want to deal with us . . . They want to destroy us.'' that is why even yet today the stationery of the PLO still has upon it the map of the entire state of Israel, not just the tiny little part they call the West Bank that they want. They want it all.

The unwavering loyalty we have received from our only consistent friend in the Middle East has got to be respected and appreciated by us. No longer should foreign policy in the Middle East be one of appeasement. As Hiram Mann said, ''No man survives when freedom fails. The best men rot in filthy jails and those who cried 'appease, appease' are hanged by those they tried to please.''

Islamic fundamentalist terrorism has now come to America. We have to use all of our friends, all of our assets, and all of our resources to defeat the satanic evil.

When Patrick Henry said, ''We will not fight our battles alone. There is a just God who reigns over the destiny of nations who will raise up friends who will fight our battles with us,'' he was talking about all our friends, including Israel. And that is what is happening, as of yesterday and I thank God for that. Israel is now in the battle by our side.

That is what is happening. As of yesterday, Israel is now in the battle by our side, and I thank God for that. It is time for our policy of appeasement in the Middle East and appeasement to the terrorists to be over. With our partners, our victory must and will be absolute victory.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I was to speak next, but I ask unanimous consent that the Senator from Vermont be given 3 minutes and then I have the opportunity to address the Senate after that.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2002—CONFERENCE REPORT—Continued

Mr. JEFFORDS. Madam President, as chairman of the Environment and Public Works Committee, which is the lead authorizing committee for many of the programs authorized in the Transportation Equity Act for the 21st Century, I would like to comment on the pending FY 2002 transportation appropriations conference report.

Overall, this is an excellent bill and I intend to vote for it. However, there are a few provisions in the highway portion of this legislation that concern me. TEA–21 represented a carefully negotiated compromise between many different points of view, numerous committees, and the entire House and Senate. One key provision of this compromise legislation was Revenue Aligned Budget Authority—RABA—which ensured that obligations from the Highway Trust Fund would equal revenues into the fund, called TEA–21. TEA–21 determined a carefully negotiated breakdown between the share of RABA funds that would flow to the States through the apportionment formulas and the share that would be competitively distributed through the allocated programs.

Unfortunately, the conference report makes significant changes to the authorization for RABA funding. As it has done in each of the past 2 years, the conference report ignores the authorized distribution of funds for allocated programs under RABA. However, this time, rather than giving the money back to the States through the formulas, this legislation earmarks it for special projects. In addition, the conference report earmarks nearly $500 million that was supposed to be distributed to States through the apportionment formulas. As a result, some States will lose significant amounts of highway funding. In essence, I am very concerned that the appropriators are rewriting the apportionment formulas that were so carefully negotiated in TEA–21.

I do not mean to begrudge the appropriators their prerogative to earmark funding for specific projects. In fact, I am very pleased that some of the funding is set aside for Vermont. However, at some point we do have to draw the line on earmarking when it threatens the very fabric of a carefully negotiated authorization. Unfortunately, this year we may have finally crossed that line.

I look forward to working with the appropriators next year and throughout the reauthorization process to make sure we do a better job of maintaining the integrity of TEA–21 while providing the appropriators flexibility within the guidelines set forth in that law. TEA–21 is a delicately balanced piece of legislation and we must be careful not to upset that balance.

I yield back any time I have.

The PRESIDING OFFICER (Mr. DURBIN). The Senator from Michigan is recognized.

PARTISAN ATTACKS ON THE MAJORITY LEADER

Ms. STABENOW. Mr. President, I rise today to express great concern about recent events and comments that have been made in this Chamber and in the House of Representatives that I believe are not in keeping with the sense of cooperation and bipartisanship that we have seen since September 11.

I remember, after the horrible attacks that we all grieved about and have focused on, on that day of September 11 we joined together on the Capitol steps, and one of our colleagues spontaneously started singing ''God Bless America,'' and we all joined in.

And there was a sense of purpose and dedication and commitment as Americans. We all said that while we may have had differences—that is what it is all about in a democracy—we were going to put aside the partisan bickering and the personal assaults and do as our President asked, which was to come together and focus on the needs of the country and to set a new tone.

And then a few weeks later we saw our own majority leader and his staff under another kind of attack, that of anthrax. It came to be an attack on those of us in the Hart Building. And we have now seen other letters. But we have seen our majority leader and his staff operating with incredible dedication, with poise, with tremendous leadership. And the hard work of the staff is continuing.

In fact, all of our staffs are continuing under very difficult circumstances. My own staff operates out of a room in the loading dock at Russell. We see people who are in various situations around this complex of the Capitol, but they continue to serve.

We have done a lot of things. We immediately responded to the attacks with a commitment of resources for New York and for the Pentagon. Yesterday I had the opportunity to visit the Pentagon and see the incredible changes that have taken place since September 11. They are rebuilding the Pentagon with speed that is amazing. Everyone involved in that should be commended for the work they are doing to rebuild this important part of our country and our national security and leadership.

We have responded to that. We have passed airport security bills. Yes, there were differences, but they were worked out to move us forward in terms of airport and airline security.

We have passed economic legislation to support the airlines and passed a sweeping antiterrorism bill that has included the ability to track the money through money laundering provisions—I was pleased to be a part of it in the Banking Committee—as well as upgrading the tools available to law enforcement officials and create the kinds of opportunities to reach out and prevent terrorism as well as to respond to it.

We have continued to move the appropriations bills through this process. We are coming to the conclusion of that in the next couple of weeks. But we are still debating economic recovery, how best to do that. What should be our priorities? Should we, in fact, invest in additional homeland security, beefing up our public health infrastructure, as I hope we will do?

But we are now seeing a constant drone of attacks and comments being made about our Senate majority leader, and I just have to rise today to express deep disappointment and concern about that. We have seen personal comments being made.

Last week the chair of the House Ways and Means Committee made statements about our leader saying there was nothing inside the leader's head on which to focus. There have been implications, with all kinds of derogatory statements that have been made about his leadership and calls for him to step aside because he may be putting forward a different vision or set of values and priorities than someone on the other side—statement after statement, attacks about someone's sincerity and their patriotism and their leadership that are just not helpful and not necessary and, by the way, absolutely absurd.

I found it offensive, when we were listening to the debate on the energy bill on Friday; over and over again it was laced with personal comments, comments that are unbecoming to this body or the body on the other side of the building from which I came as a House Member.

Mrs. BOXER. Will the Senator yield for a question?

Ms. STABENOW. I am happy to yield to my good friend from California.

Mrs. BOXER. First, I want to say how proud I am you took to the floor to bring this to light. I think the American people are ill-served, as you do, when there are personal attacks on any of our leaders.

Do we have differences? Yes. Should we express those differences? Absolutely. Because, frankly, I have a lot of people who say: What really is the difference between Democrats and Republicans? So the fact that we do not agree on an economic stimulus package is to be expected. The fact that the Democrats are fighting for people who lost their jobs, yes, that is to be expected. The fact that we do not think it is right to give big rebate checks to the largest and most wealthy corporations in America and call it a stimulus, the fact that we do not agree with it is to be expected. The fact that the other side would support that is to be expected. So debating that is fine.

But my colleague has pointed out the viciousness of the attack against the leader of this Senate, TOM DASCHLE, who happens to be one of the kindest, most compassionate people in politics today, is something that cannot go by without a statement.

So I say to my friend, by way of a question, isn't it true that the people of this country expect us to have differences, expect us, on domestic policy, to bring those differences to light, where we are so united on the terrorism front—and we support our President and our Secretary of State; and we are moving together in this fight; there are no differences really, not even around the edges on that. But isn't it a fact that it is fine for us to have these differences, but that these differences should be debated with respect, with fairness, and with dignity?

Ms. STABENOW. I couldn't agree more with my friend from California. I know the families I represent in Michigan are saying to me: We know there are differences in approaches.

That is a reason why they sent me here. And I am of a different party, a different philosophy, on economic questions possibly, or other domestic issues, than those on the other side of the aisle.

They expect us to operate with civility, with respect. I believe and in fact have been telling people in Michigan that there is a new day, that since September 11 we have come together. Yes, we have differences in priorities. We are Americans. Under the Constitution, we have a right, an obligation, to give our point of view. There will be differences.

The personal attacks, the vicious partisan attacks that we have heard recently are just the same old thing we have seen for too long around here. People don't want to see that happening.

I will not question someone's patriotism. I will not say because they differ with my thoughts that there is nothing between their ears or that they are somehow a child who wants a recess and that they are a third grader—whatever the comments were last week. Those kinds of things, frankly, demean all of us. That is my concern.

We have a lot of work to do in this next couple of weeks. People expect us to be focused on their needs and on the needs of the country, the safety of the country, the economy. It is legitimate for us to debate, and we have legitimate differences on how to move the economy forward. I have spoken before in this Chamber about whether it is supply side economics or demand side economics, what is the best mix? That is legitimate. People expect us to do that. We would not be fulfilling our own responsibilities as individual Senators not to come forward with our own ideas. But when it goes on and we hear our leader being attacked for abrogating his responsibility or that every day someone is in pain should be laid at the foot of TOM DASCHLE, that is uncalled for.

I was particularly concerned that there are actually ads being run now attacking our leader in the Senate because of a meeting he had in Mexico with the President of Mexico. Our President has met with Vicente Fox. President Fox has been here. We have welcomed him to the Capitol. They are our neighbors to the south. We have important work to do with them. Certainly part of what happens economically relates to trade and the relationship of our two countries. Yet we have those who have actually paid for partisan ads back in our leader's home State to imply that while a weekend in Mexico might be a nice break from the attacks at hand, in fact, this trip was the wrong thing to do.

I hope we can decide we are going to dedicate the time between now and the end of this session to the serious, vital business at hand and the priorities about which we can disagree. We can disagree about whether or not to drill in Alaska's national wildlife refuge. We

can disagree about appropriations priorities.

As someone who has tremendous respect for the leader of this body, I will continue to object when there are personal comments made either about our leader or about the Republican leader or about others on the Senate floor. We have been through too much together since September 11 to turn back to the personal kinds of derogatory statements that were a part of the past. We can do better than that. The American people deserve better. The American people expect us to do better than that.

I call on the President of the United States and the Republican leadership to join us in a vigorous, sincere debate on the priorities for the country, the best way to achieve economic recovery and security, and to do that with the highest and best that is in us. We have a great body and people of wonderful good will on both sides of the aisle in both Houses, as well as the White House. We can do what the people expect us to do. We can do it right. I hope in fact we will get about the business of doing it.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the previously scheduled vote which is scheduled for 12:30 now begin at 12:25 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the pending amendment, the Domenici amendment No. 2202, be laid aside, to recur at 2:15 p.m. today; that there then be 5 minutes of debate equally divided and controlled in the usual form prior to a vote in relation to the amendment; that there be no second-degree amendments in order, nor to the language proposed to be stricken.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2002—Continued

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the conference report to accompany H.R. 2299.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 346 Leg.]

YEAS—97

Akaka	Durbin	McConnell
Allard	Edwards	Mikulski
Allen	Ensign	Miller
Baucus	Enzi	Murkowski
Bennett	Feingold	Murray
Biden	Feinstein	Nelson (FL)
Bingaman	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Boxer	Graham	Reed
Breaux	Gramm	Reid
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Santorum
Byrd	Harkin	Sarbanes
Campbell	Hatch	Schumer
Cantwell	Helms	Sessions
Carnahan	Hollings	Shelby
Carper	Hutchinson	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

NAYS—2

Bayh	McCain

NOT VOTING—1

Hutchison

The conference report was agreed to.

Mrs. MURRAY. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:55 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001—Continued

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, parliamentary inquiry: What bill is pending before the Senate? What are the agreements regarding it?

The PRESIDING OFFICER. The pending bill is H.R. 10, to which pending is the Daschle substitute amendment, and an amendment to that is the amendment by the Senator from New Mexico with time for debate evenly divided.

Mr. DOMENICI. Has a vote been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. DOMENICI. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, I yield myself the 2½ minutes that I have.

First, I thank the chairman of the Budget Committee for cosponsoring this amendment.

Second, for those—they are numerous in the Senate—who are for the railroad retirement bill, this amendment is not a poison pill for the railroad retirement bill. It does not impact how this bill will be implemented. It simply will make sure the costs are recorded correctly. If you record them correctly rather than direct how they will be scored, you have no impact on whether the bill proceeds.

There is no additional point of order or anything that is an impediment to the bill. It is just that we very seldom, if ever, let a bill go through that costs money where we direct how it should be scored. In this case, the Congressional Budget Office was asked how much it will cost. They told us. Instead of scoring it as we would normally in almost every single bill that affects spending, the House, in the final moments as this bill was getting ready to be passed, put in language saying it shouldn't be scored as it is; we want to score it another way; we direct it not be scored costing $15.3 billion.

All I ask is that provision be stricken. The bill does not have language in it, if the Domenici amendment is agreed to, that directs how you score it, but rather the costs will be scored as estimated by the Congressional Budget Office, which does the same thing for every bill that goes through. Bills do not have language telling you that you must score it differently than you score all the other bills and differently than the Congressional Budget Office indicates.

I reserve whatever time I have and yield the floor.

The PRESIDING OFFICER. Who yields time in opposition?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield myself a minute and a half.

Mr. President, I have the highest regard for the Senator from New Mexico and also for Senator CONRAD, chairman of the Budget Committee. They do an excellent job in a very difficult situation trying to keep us on track with

the budget matters. They are very good Senators. I think people from their home States know that. But I just wanted to state that.

The question here is, does this cost any money? If you assume it does cost money, then there is an argument against directed scorekeeping; that is, there is an argument we do have outlays of maybe $15, $17 billion.

What is it we are addressing? We are addressing that the tier 2 retirement trust fund buys securities; that is, stocks and bonds, rather than buying Treasury bills. The question is, Is buying equity securities the same or different from buying Treasury notes? Under the rules, they are different; that is, one is an outlay and the other is not. So it will be a $15 billion outlay cost under the budget rules if the trust fund invests in securities; that is, equity securities, and no outlay, no cost when the trust fund buys Treasury bonds.

I yield myself an additional 30 seconds.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, technically, the chairman and the Senator from New Mexico are right because that is the way the budget rules have been applied. And this is a gray area. This is not similar to buying a truck or a gold mine or buying another physical asset. Rather, it is buying securities instead of Treasury bonds.

I yield myself an additional 30 seconds.

So I am saying to my friends, the Government is no better off or worse off whatsoever if the trust fund buys securities rather than buying Treasury notes, as all pension funds do. They invest in both Treasury securities as well as equity securities.

So I urge my colleagues to not apply this rule at this time because the Government is no better or worse off; second, if the Senator's amendment were to be adopted, that would be the end of the railroad retirement bill this year because we would have to go back to the House and it would not survive this session or maybe even this Congress.

The PRESIDING OFFICER. The time for the Senator from Montana has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield whatever time I have to Senator CONRAD and thank him for cosponsoring the amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I favor the railroad retirement legislation. I strongly favor it. But I just as strongly support this amendment to knock out directed scorekeeping because I think it misleads our colleagues and our countrymen.

Directed scorekeeping would suggest this legislation costs $250 million this year to implement. That simply is not correct. The cost is $15.6 billion. The hard reality is, that is what the Federal Government is going to have to borrow to fund this legislation, $15.6 billion, not $250 million. We should not say otherwise.

We can support this legislation but be direct and clear with respect to its cost.

The PRESIDING OFFICER. The Senator's time has expired.

The question is on agreeing to amendment No. 2202. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 59, as follows:

[Rollcall Vote No. 347 Leg.]

YEAS—40

Allard	Feingold	Murkowski
Bennett	Fitzgerald	Nelson (FL)
Bond	Frist	Nickles
Brownback	Gramm	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Campbell	Helms	Smith (NH)
Cochran	Inhofe	Stevens
Conrad	Kyl	Thomas
Craig	Levin	Thompson
Crapo	Lott	Thurmond
DeWine	Lugar	Voinovich
Domenici	McCain	
Ensign	McConnell	

NAYS—59

Akaka	Dorgan	Lincoln
Allen	Durbin	Mikulski
Baucus	Edwards	Miller
Bayh	Enzi	Murray
Biden	Feinstein	Nelson (NE)
Bingaman	Graham	Reed
Boxer	Hagel	Reid
Breaux	Harkin	Rockefeller
Byrd	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchinson	Shelby
Carper	Inouye	Smith (OR)
Chafee	Jeffords	Snowe
Cleland	Johnson	Specter
Clinton	Kennedy	Stabenow
Collins	Kerry	Torricelli
Corzine	Kohl	Warner
Daschle	Landrieu	Wellstone
Dayton	Leahy	Wyden
Dodd	Lieberman	

NOT VOTING—1

Hutchison

The amendment (No. 2202) was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Minnesota.

UNANIMOUS CONSENT REQUEST—H.R. 2716

Mr. WELLSTONE. Mr. President, I do not want to rudely interrupt, but I want to take a minute to make a unanimous consent request.

I see the ranking member of the Veterans' Committee in the Chamber. Shortly, I am going to ask unanimous consent to pass a veterans homeless bill. I will give my colleagues the background.

Three weeks prior to the Thanksgiving recess, I came to the Chamber to try to pass a version of the homeless veterans assistance bill. LANE EVANS has done a lot of work on the House side, so has CHRIS SMITH. It is an excellent bill. We passed this bill out of the Veterans' Committee by a unanimous vote.

I had to come to the Chamber four times asking unanimous consent to pass the legislation. There was an anonymous hold. Again, I say to colleagues, any Senator certainly can object, but this whole business of anonymous holds and no arguments made is unbelievable. So I had to say to my colleagues on the other side that on nonemergency measures, I was putting a hold on everything. My hold was not anonymous. I said on the floor—it is me—I am putting a hold on it.

We have been doing all this work with Democrats and Republicans on the House side. CHRIS SMITH, who is chairman of the Veterans' Committee in the House, has been especially helpful on the bill. We had strong bipartisan support on the Senate side as well. We preconferenced it, and we have unanimity of opinion. This veterans homeless bill is superb legislation.

About a third of the homeless adult males in the country are veterans. Many of them are Vietnam vets. Most struggle with posttraumatic stress syndrome. Most struggle with addiction. They do not get help. It is a scandal.

This legislation is one-stop shopping, places where people can go for community-based care, mental health services, treatment, and assistance in getting affordable housing. My God, we could not do anything that is better.

This legislation came back from the House. I thought we certainly would pass it. I know the chair of the Veterans' Committee in the House, a Republican, has urged colleagues to do so.

Now I understand we have another one of these anonymous holds.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 201, H.R. 2716.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I am sorry that I have to do this, but for the proceedings we are now under, and the fact we have dealt with this issue before—my colleague and I agree on much of what he has just said, but I do believe the way he now attempts to address this issue does not fit where we want to go or where the Senate has acted and the House has acted. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Minnesota.

Mr. WELLSTONE. If I had gone further, I would have mentioned also, with the support of Senator ROCKEFELLER and Senator SPECTER, the

unanimous consent request was that the amendment be agreed to; the act, as amended, be read a third time and passed; and the motion to reconsider be laid upon the table. Of course, my colleague from Idaho has objected.

I am a bit of an emotional Senator. I say to my good friend from Idaho that unlike the Senator who has put an anonymous hold on this bill, my hold is not anonymous. I have a hold on every single resolution and legislation introduced by my colleagues on the other side of the aisle that is nonemergency—all of it. It is not anonymous. I have just said it here.

I did it for 3 weeks before Thanksgiving. I cannot believe it. Now we are back at this again. It comes over here from the House with the full approval of the chair of the Veterans' Committee—I think unanimous support—support of both Senator ROCKEFELLER, who chairs the Veterans' Committee, and Senator SPECTER.

We have been working on this for several years. It is a scandal. Is it too much to ask that we get this support to veterans? People are giving all these speeches about how great it is that our men and women are serving our country, they are in harm's way, we support them—and we do, I agree—and then when they get out of the Armed Services and they are now veterans, all of a sudden we do not say thank you any longer. You don't think you can find it in your hearts to pass this bill that is so important to this group of veterans in this country? That is my first point.

My second point deals with my indignation, for which I apologize. I am just getting sick and tired of these anonymous holds. I really am. Therefore, I say to my good friend from Idaho, I know this is not his position. He has to come out here by proxy, representing someone who has put an anonymous hold on this bill again, in which case I have a hold on all legislation, all resolutions introduced by my good friends on the other side of the aisle that are nonemergency.

Mr. CRAIG. Will the Senator yield?

Mr. WELLSTONE. I will be pleased to yield. I do not yield the floor. I will be pleased to yield for a question.

Mr. CRAIG. Briefly on this issue.

The PRESIDING OFFICER. Will the Senator yield for a question?

Mr. WELLSTONE. I yield for a question.

Mr. CRAIG. I thank the Senator for yielding. As the Senator from Minnesota knows, a hold is not absolute. It merely is to notify those who have objection to the bill that it might be coming up. I think the Senator has operated appropriately. I am not the person who has the hold on his bill, but it is important we deal with the issue in a timely fashion.

There is much of what the Senator said I agree with. I serve on the Veterans' Committee. I do not say by this action I am not in support of veterans, homeless veterans, those who are in need. I understand where the Senator wants to go. My guess is ultimately we can get there, and I will work with the Senator to make that happen.

Mr. WELLSTONE. Mr. President, I note my colleague from Texas is in the Chamber. I will only take 1 more minute.

I thank the Senator from Idaho. I take his remarks as being very sincere. Again, the reason I have to do this, I say to my colleague, is because I went through this for 3 weeks prior to Thanksgiving. I came to the Senate Chamber 4, 5 times and never could get approval. The hold was anonymous.

Last week, I tried to get approval, and I have tried to get approval since. It is out there. Everybody knows what the bill is. We have been working on this a long time. There is strong bipartisan support for the bill.

I thank my colleague. I hope we can work it out. In the meantime, before we work it out, I want all of my good friends on the other side to know my hold is not anonymous. I have a hold on all their resolutions, amendments, and bills unless they are emergency.

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001—Continued

AMENDMENT NO. 2196

(Purpose: To ensure that returns on investment are earned prior to any reduction in taxes or increase in benefits.)

Mr. GRAMM. Mr. President, I call up amendment 2196. It is a short amendment, and I would like it read.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 2196:

On page 2 of the amendment, insert before line 1 the following:

''SEC. 2. Notwithstanding any other provision of this Act, any reduction in tax or increase in benefits shall take effect only to the degree that the Secretary of the Treasury finds that the actual earnings of the Railroad Retirement Investment Trust Fund are sufficient to fund them.''.

Mr. GRAMM. Mr. President, we have before us a bill that 74 Members have cosponsored. It is clear from the previous vote where the votes are on this bill. I remind my colleagues that Senator DOMENICI offered an amendment to strike a provision of the bill that was not in any bill that anybody cosponsored, and it was literally a provision that was written into the bill that orders the Office of Management and Budget, which is the budget scoring arm of the executive branch, and the Congressional Budget Office, which is the budget scoring arm of the legislative branch of Government, to falsify the budget by not counting $15 billion that is being taken out of the Treasury.

This is an extraordinary provision. It basically ordered both budgeting arms—the budgeting arm of the executive branch of Government and the budgeting arm of the legislative branch of Government—to simply look the other way and not count $15 billion being taken out of the Treasury.

Senator DOMENICI, with the support of the chairman of the Budget Committee, offered an amendment to strike that language so at least we could have honest bookkeeping. Only 40 Members of the Senate voted for honest bookkeeping. It is clear this railroad retirement bill is wired.

What I wanted to do was to offer an amendment to achieve everything proponents of the bill claim they want to do but to do it in a responsible manner. I don't know where this amendment is going. I expect it is going to get relatively few votes. However, I feel obligated to offer the amendment and people can do what they want to do with it.

Let me try to define the problem. If you read what people are saying in the paper and you talk to all these very nice people in the hallways who are lobbying for this bill, they say: Look, we have over $15 billion in our trust fund. It is our money. It is invested in Government bonds. We don't think it is a good investment—I sure agree with them there. They claim they want to take the money and invest it. Then with the higher interest rates that they can earn, they want to lower taxes and increase benefits.

Now, there is a big problem here. If you look at the actual estimates done by the railroad retirement board, you find under any of the three economic scenarios that the railroad retirement trust fund actuaries look at, this proposal does a lot more than simply invest the money. In fact, as I pointed out on many occasions, what this bill does, in essence, is, over a 17-year period, it literally takes $15 billion of capital out of the trust fund. This chart shows—and this is based on the Railroad Retirement Board's data; this is not my data—under current law the trust fund would build up along the black line entitled ''Trust Fund Under Current Law.''

Let me remind my colleagues that railroad retirement is not fully funded. If we had ERISA laws applied to railroad retirement where you had to have a trust fund sufficient to pay benefits, ERISA would shut railroad retirement down today. This is a program that has no actuarial solvency whatever and it is currently receiving huge Federal taxpayer subsidies today and has always received Federal subsidies.

Basically what is going on, this is what the trust fund balance looks like under current law. Proponents of this bill say it doesn't make sense to invest this in Government bonds; let us invest it in stocks and bonds. We will have more money; we can have a better, more secure retirement program. I agree with that. I am supportive of letting them invest the money. The problem is, that is a smokescreen.

What they are really doing, if you look at what happens to the trust fund

before any money is invested, before one single penny is invested, they cut the amount of money the railroads are putting into retirement from 16.1 percent of payroll to 14.75 percent, and it falls to 14.2 percent and then to 13.1 percent. They also lower the retirement age from 62 to 60. At the same time we are raising the retirement age for Social Security, they lower the number of years to be vested from 10 to 5 and they raise benefits. The net result is, even though they assume they will earn 8 percent in real terms, whereas they are only getting 1 percent in real terms from Government bonds the way they are calculating it, even with as high a rate of return, what happens to the trust fund under this bill? What happens to the trust fund is, it goes down because not only are we paying out every penny of earnings from the higher rate of return but we are also paying out principal.

Why doesn't it go broke? The reason it doesn't go broke is, in 2021, the trust fund is now down to about a third of what it would be under current law because you have added all the new benefits. You reduce the amount of money going into the fund so even though you hope to earn a much higher rate of return, you expect all the return and two-thirds of the trust fund.

What happens in 2021 that keeps the system from going bankrupt? The way the bill is written, at that point, the payroll tax, which is down to 13.1 percent of payroll, skyrockets. It goes from 13.1 percent up to 22.1 percent and it does that all in a span of some 5 years.

I ask my colleagues the following question: If railroads are saying they cannot operate profitably while we are putting 16.1 percent of payroll into this retirement program—and remember, they have three retirees for every worker; Social Security has three workers for every retiree; this program is nine times as financially vulnerable as Social Security—if they can't afford to pay 16.1 percent today and they are urging us to let them cut that to 13.1 percent, how can they come in 2025 and afford to pay 22.1 percent of payroll, which is what their numbers require?

Does any Member here not believe that come 2019 the railroads are going to come to Congress and say, we would be required simply to maintain the trust fund at roughly one-fourth of what it would have been without this law, already four-fifths of the trust fund would be good? They are going to run to Congress in 18 years and say, we can't possibly pay a 22.1-percent payroll tax and remain in business. So you are going to either have to have the taxpayer come in and bail out this fund or you are going to have every railroad in America going broke.

One question that is never answered is, if they can't afford to pay 16.1 percent today, how are they going to afford paying 22.1 percent in 25 years? The point is, they don't ever intend to pay that amount. They are, in essence, asking us, despite all the rhetoric to the contrary, to let them take four-fifths of the trust fund over the next 25 years and divide it up with retirees and then have the Federal Government guarantee the fund so 25 years from now we have one-fourth of the trust fund to pay benefits we have today, and the railroads, which cannot pay 16.1 percent, would be paying 22.1 percent then.

Now, they are going to argue the system would be solvent, they can pay the benefits. But they can only do that with a 22.1-percent payroll tax. Nobody that I know believes that is a tax they can pay. Anyone who looks at this realizes if we adopt this bill, 20 years from now we won't be here, other people will be here, but the railroads will be saying, you are going to have to come and do something because we can't pay these taxes.

Under the best of economic circumstances—and this is data from the railroad retirement board—under the best of circumstances, the bill before the Congress will deplete 53 percent of the trust fund by 2026. Under a more restricted and a more normal economic circumstance, it will deplete 75 percent of the trust fund. And under a pessimistic economic scenario it will bankrupt the trust fund in 20 years. These are not my numbers. These are the numbers of the actuaries of the railroad retirement trust fund.

Now, I understand people want to pass this bill, so I put together an amendment which lets the railroads and the unions do what they want to do, which is take $15 billion out of the trust fund right now and invest it. That will become a private trust fund and they will have it in stocks and bonds and then they will earn on those stocks and bonds. The amendment I have offered says, look, do everything you are claiming to do here but don't reduce the amount of money going into the trust fund from the railroads and don't increase benefits until you have invested the $15 billion, and until you have earned a rate of return on it. And then when you are dealing with the interest and not the principal, you can do whatever you want to do.

What this bill does is take the money out of Government bonds and allow it to be invested, $15 billion of it; then as that money earns interest, you could lower the amount the railroads are paying in, you could lower the retirement age, you could increase benefits, but only to the degree you were doing it with the interest you are earning. You could not spend off the trust fund, thereby putting the taxpayer at greater risk.

I know if anyone defends the proposal, they will say, look, the trust fund does not go broke under the bill. In fact, I guess they would concede it goes down in value under the expected economic scenario by three-fourths. But there is still enough money to pay the benefits. That is only part of the story. The rest of the story is, the only reason there is enough money to pay benefits at this point under the bill is that it is assumed by them that the tax on the railroads to pay for the retirement benefits has risen from 13.1 percent to 22.1 percent.

Does anybody believe the railroads are capable of paying 22.1 percent of the wages of all the railroad retirees into the railroad retirement trust fund? Are we not here today because the railroads say they cannot pay 16.1 percent? The whole logic, when you strip away the window dressing, is they want to lower the amount they are putting into the trust fund from 16.1 to 13.1 percent, to try to help the railroads. They have worked out an agreement to get the unions to support it by saying, in essence, $7.5 billion goes to the railroads and giving $7.5 billion to the union members. But the net result is the trust fund is $15 billion poorer 17 years from today than it is now. Even though you are earning a higher rate of return, because you are taking out huge amounts, you are depleting the trust fund.

All I am trying to do with this amendment is say invest the money and every penny you earn belongs to the railroads and the unions. Forget about the taxpayer. But don't take the principal out, just take the earnings.

Frankly, if this were some kind of reasonable debate, you might say let's take these higher earnings; part should go to the taxpayer because the taxpayer is paying a substantial amount of these benefits, part should go to the railroads, and part should go to the retirees. But I am saying forget that; take the interest, but don't take the principal. That is the essence of the amendment.

I would like to submit the amendment. I hope my colleagues will accept it. I do not understand how it can be prudent public policy to set out a policy which, while claiming to get a higher rate of return, actually reduces the size of the trust fund available to pay benefits, between now and the year 2026, by 75 percent. How can that make sense? How can it be prudent public policy to set out a program which is salvaged only by the willingness of the railroads to pay to 22.1 percent of all wages into a trust fund, when today they claim they cannot afford to pay 16.1 percent? How can that possibly make any sense?

What I am saying is don't deplete the trust fund. But every penny you earn, by investing it, you can give to the railroads and you can give to the retirees. But maintain the assets to protect the taxpayers. That is the proposal. I think it is simple and easy to understand. For those who want investment, it gives you investment. For those who want a better rate of return potentially, it gives you a better rate of return. But what it does not let you do is pillage 75 percent of the trust fund over the next 25 years. That it does not let you do.

That is the essence of the amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Montana.

Mr. BAUCUS. Mr. President, I have been listening carefully to my good friend from Texas, and a lot of what he says is accurate. But he does not, as they say, tell you the whole story. Ultimately, the question comes down to: Are there enough funds in tier 2, in the railroad retirement fund, to pay additional benefits to retirees and spouses and also to decrease the amount of taxes the railroads are now paying? Admittedly, it is a very high rate. That is the question. And can that be done in a fiscally sound manner?

Today the railroad retirement trust fund balance is growing very dramatically. Under current law, the trust fund will have balances this year of about six times the cost of benefits. Through about the year 2020, the ratio never sinks below six. At that point, the year 2020, it continues to decline forever. By the end of 75 years, the balances in the trust fund will equal an unbelievable 53 times the cost of 1 year's benefits.

So the question is, Why all this increase in balances? Isn't there something prudent that can be done about this very large increase in balances? Because under the actuarial estimates it just continues to grow and grow.

And how much of the balance is really necessary? In Social Security, the actuary considers the system to be in actuarial balance in any year the balances of the Social Security trust fund are equal to at least one time the amount of benefits that are paid out in a year. That is Social Security's standards. The actuaries have determined there is at least a 1-to-1 ratio of balances in the Social Security trust fund compared to the costs in that year that have to be paid out. Clearly, today it is much more than one, but the standard, the actuaries say, is 1 to 1. It is not six times or three times, but one.

Today, on the railroad retirement trust fund tier 2, there is a real need, frankly, to do something about the balances in a way that seems reasonable and prudent. There are some changes that should be made. One is the retirement age. Some industries are a lot more hazardous and dangerous than some others. Railroading is certainly more hazardous and more dangerous than some other industries. The retirement age today in the railroad industry under current law is 62 years. It is only fair that it be reduced to 60 years. In many industries across the Nation, the retirement age is lower than that. It can be 55, and for a hazardous industry such as railroads it makes sense that the retirement age be 60.

In addition, vesting does not have to be a full 10 years as it is today. In many industries, vesting is less than that. It is 5 years.

For survivor benefits, today when a railroader retires, he and his wife will receive 145 percent of wages. If he dies, the widow gets 50 percent. If he were single, it would be 100 percent. So the thought is to at least raise the widow's. If she survives her husband, raise her benefits to 100 percent. It seems to me that the railroader himself would get 100 percent if he retired and is single. It just makes sense.

The current taxes that the company pays are too high. They are much higher than taxes paid in the private arena, and they are higher than what a company would pay in its pension program for its employees.

The idea is to lower the taxes and increase the benefits in a way that is reasonable and prudent so we don't have that huge balance accumulating in the railroad trust fund. I think it is done in a very sound and fair way.

The ultimate question really is, Is the balance of money in the trust fund large enough to accommodate these changes? In the legislation before us, which includes the changes I have indicated, the balances in the trust fund in any year are at least one and two-thirds times greater than the amount needed to pay benefits in that year. That is a higher standard by two-thirds than the standard currently for Social Security. By the end of the 75-year period under this bill, the balances are about 12 times the cost of paying benefits in any 1 year.

Look at the chart of the Senator from Texas. He has that red portion. It continually falls off until about the year 2023. In 2026, his chart stops. It doesn't keep going. If his chart were to keep going, it would have the effect of this chart behind me to my right. It falls down to the levels indicated on the chart of the Senator from Texas, but then it starts right up again at a very high rate.

The low level which is of concern to the Senator from Texas rightfully should be addressed. It is a level which is one and two-thirds times higher than the actuarial balance that the chief actuary at Social Security says must be maintained.

There are provisions in the bill—the Senator from Texas is correct, and the railroad industry agrees and thinks this is just fine—which say if the funds are not what we assume them to be, then the railroader's and employer's taxes begin to rise. But the Senator from Texas says when that happens, and if it happens, Congress is going to just come right in and bail out the railroad industry.

We have not done that, historically. The last five times this Congress generally addressed the question of the financial viability of the railroads and/or the retirement system, in 1974, in 1981, in 1983, and in 1987, Congress did not bail out the railroads. Congress either decreased benefits or raised employer taxes. We encourage the railroad to solve these problems themselves. We have never ''bailed out'' the railroad industry.

Further, this legislation before us has lots of built-in sort of requirements of independent audits, of reports, and looking far ahead as possible to try to anticipate if there is going to be a problem of some kind or another.

Specifically, the legislation before us requires the trust fund to have an independent, qualified public accountant to audit the trust. The trust fund then must submit a report to Congress which includes a report based on the audit. The report supplied to Congress must contain financial statements of operations and cashflow.

Moreover, two financial reports required in current law would continue. The chief actuary for the Railroad Retirement Board must also do a major update of actuarial evaluations every 4 years but with annual updates every year by the chief actuary of the Railroad Retirement Board. The Railroad Retirement Board will report annually to the Congress and to the President as to the state of the system. Every year we will get updates.

The lines on the chart of the Senator from Texas as well as these are the intermediate assumptions; that is, there is a pessimistic assumption, there is an intermediate assumption, and there is an optimistic assumption. These are the intermediate assumptions on both of these charts.

What basically drives these assumptions? What is the biggest unknown that we have to look at?

It is essentially the level of employment in the railroad industry. When the level of employment in the railroad industry declines significantly, obviously, as is in the case of Social Security, there are fewer people paying into the trust fund compared with the number of people drawing benefits from the trust fund.

This is an industry which is almost the opposite of Social Security. For Social Security, there are about three workers for every one person paying in. In this industry, it is about one to three. It is a mature industry. It is not a young industry. It is an industry with fewer employees and more retirees.

The question is, How many more fewer employees will there be to accommodate the number of retirees?

I would like you to look at this chart behind me. It indicates that we need not worry about a cut in the number of employees. That is because of increased productivity and increased efficiencies in the railroad industry. It really can't get much lower per ton mile or per railroad mile traveled.

This chart shows the railroad crew size and productivity. As you can see, in about the years 1950 to 1964, the average crew size was five. In the years roughly 1960 to 1978, the crew size was four, and on down to about 1998, the average crew size is two.

You can't get much lower than two for a crew on a train. There is always going to be at least two. We are not going to have fewer employees. We will probably have more trains, which means more employees, but we are not going to have fewer employees per train.

Meanwhile, the revenue per ton mile and per employee, as you can tell by the chart, is increasing at a very high rate. We have more revenue for ton miles per employee. That is going to help the solvency of the trust fund. At the same time there are not going to be any fewer employees than there are today.

The basic point is, Is this the responsible way to solve the problem of explosive trust fund balances? I submit yes. One, the actuaries will maintain a balance that is proper. There will be annual reports galore.

I urge Senators to resist this amendment. It is unnecessary. It is wrong. It means the balances will stay forever. The benefits will not be greater. The burden on taxes will not be lower in due time.

If this amendment is agreed to, despite being wrong on its merits, it is going to probably mean no railroad bill this session, and maybe next year, because we will have to go to conference on this matter.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me be brief. When all the people came to see me about 6 months ago—actually, almost a year ago, in relation to this bill—I sat down to listen to them, having spent about 3 years working on Social Security.

Let me give you my response, based on something I think everybody can understand. Today we are really worried about Social Security because we have 3.3 workers per retiree. We are going to two workers per retiree. We are very concerned about our ability to pay Social Security benefits.

I have done a great deal of work and written a fair amount of material and articles explaining how investing Social Security surpluses in interest-earning real assets will cause the trust fund in Social Security to grow and will enhance our ability to pay benefits.

But I have never suggested that investing the Social Security surplus could allow us to lower the retirement age in Social Security from 65 to 60. In fact, under current law, it is rising from 65 to 67 even at this moment. I have never suggested that before any money is invested that we could cut Social Security taxes. Someone would laugh in your face if you suggested that.

Now, into my office walk representatives of the railroads and unions, and they say: Look, we have a program which has one worker for every three retirees, not the other way around, which it is with Social Security. This retirement program is in much worse shape than Social Security. We want to invest our trust fund, and we are going to cut the retirement age, reduce the amount of time you have to work to get benefits, increase benefits, and reduce the amount that the railroads are putting into the program through two different payments they are making.

First of all, if, in your retirement, somebody told you they could spend 75 percent of your trust fund, give you more benefits, and you could pay less in, I do not think you would believe it. Well, you should not believe it because it is not true.

My colleague points out my chart ends in 2026. Why? Because in 2026 the payroll tax, which the railroads are saying have to be reduced for them to be able to operate—they have to be reduced from 16.1 percent down to 13.1 percent—by the time we get to 2026, the payroll tax is up not to 16.1 percent but 22.1 percent. Does anybody believe that the railroads can or will pay 22.1 percent of payroll into this retirement program? Nobody believes they can or will.

Everybody understands that 20 years from now we are going to hear this knock on our door. We are not going to be here, but somebody is going to be here, and the railroads are going to say: My God, this retirement program is in terrible trouble, and under law our payroll tax is getting ready to jump from 13.1 percent to 22.1 percent. We cannot pay these taxes. At that point whatever these charts show is not relevant because everybody knows the railroads cannot pay that amount into this program and operate viably in the American economy.

So what is going to happen? You have spent four-fifths of the trust fund or let the railroads spend four-fifths of the trust fund. You have a payroll tax of 22.1 percent. What is going to happen? They are going to say they can't pay it and they are going to ask the Federal Government to intervene.

When you are talking about what good shape this trust fund is in, what is being called solvency here is having enough money to pay benefits for 4 years. There is no private retirement program under ERISA that would not be shut down if it had assets that would only pay for 4 years.

My amendment is not what I would call a stingy amendment. My amendment says, OK, take this trust fund, and we are going to give you $15 billion right out of the Treasury. You can invest it on behalf of the retirees. And then you can spend every penny that you earn on that $15 billion. You can lower the amount railroads are putting into the system. You can give new benefits, but you cannot spend the principal. That is all my amendment does.

If we do not adopt an amendment similar to this, I want to predict, even though I do not think any of us will be here 20 years from now—I certainly will not—that 20 years from now this retirement program is going to be on its back, the railroads are going to be being pulled down economically by having a 22.1-percent payroll tax, and we are going to have a transportation crisis in America.

I do not know if anybody will ever look back at what we are doing here, but they should. Because what we have done, underneath all else, is that while we are doing some things that make sense—letting them invest the trust fund makes sense—we are literally letting them take $15 billion, we are letting the railroads pocket $7.5 billion, we are letting them give $7.5 billion in gifts to their retirees and workers, and we are setting up a situation where there is going to be a train wreck, and the taxpayers are going to be forced to pick up the pieces.

Senator NICKLES and I have no constituency. That is obvious. This thing has been sold. All the railroads have come to Republicans and said: This is great; it will be great for railroads. The unions have come to the Democrats and said: This will be great for the workers. And the bottom line is, nobody cares, apparently, about the taxpayer or about the future of this retirement program.

So we are on the verge of cutting this, taking 75 percent of the money out of this trust fund and giving it away, committing ourselves to the railroads, having to pay a tax that we know they are not capable of paying, that we know cannot be paid. How are railroads going to put 22.1 percent of every dollar they pay to every worker into this trust fund 20 years from now when they cannot put 16.1 percent in today? They are not going to be able to do it.

So all my amendment says is, let them invest it and do whatever they want to do with the interest, but do not let them spend the principal. What that will mean is, the trust fund will basically stay at its current level. They can reduce the amount railroads are paying in. They can increase benefits. Neither of those actions, in my opinion, is fiscally responsible, but they cannot simply pillage the trust fund for $15 billion over 17 years, which is exactly what happens under this proposal—and every set of figures used by every person in this debate all come from the railroad retirement board. All of them show that the trust fund, over the next 20 years, is depleted, under the expected economic projections, by 75 percent. That cannot be good public policy.

I understand that Senator NICKLES has an amendment. What I would like to do is yield the floor. If there is any more debate on this amendment, there can be, and I would be happy to have the amendment set aside. Senator NICKLES can offer his amendment, and then it can be debated. And then we could have the vote on the two amendments and sort of see where we are.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 2175 TO AMENDMENT NO. 2170

(Purpose: To use a 5-year average rather than a 10-year average on capturing the average account benefits ratio)

Mr. NICKLES. Mr. President, I ask unanimous consent the pending amendment be laid aside and I call up amendment No. 2175.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 2175 to amendment No. 2170:

On page 40, line 1, strike ''10 most'' and insert ''5 most''.

Mr. NICKLES. Mr. President, I compliment Senator GRAMM for reading the bill and trying to do something to protect the integrity of the trust fund.

He has said, No. 1, if we are going to give them $15 billion, let's make sure we don't spend down the principal. And, No. 2, let's only spend the interest or the dividends from that trust fund to provide new benefits. I support him in that. I compliment him for that.

I also have an amendment that wants to protect the integrity of the trust fund. The trust fund, by any of the scenarios—I will show the charts in just a minute—the trust funds goes way too low. The bill's stated objective is to keep the trust fund equal to but somewhere between four and six times the annual payment to beneficiaries. That is their goal. That is their objective. Unfortunately, the bill before us, under the middle assumption, doesn't even come close to that.

As a matter of fact, the trust fund goes all the way down to about 1.3 annual payments. In other words, it almost goes bankrupt. It barely has enough to make 1 year's payments of benefits. That is not a good deal for taxpayers, and it is certainly not a good deal for railroad retirees. I don't think it is a good deal for the railroad companies because they are going to be socked with a very large tax increase.

I will use the chart Senator BAUCUS has. I think it illustrates it. We start out with about 6 years of benefits under today's standard, but when we pass this bill, in a period of about 20 years, we go down to just a little over 1 year's balance. In other words, we take a fund—and I will insert this in the RECORD. Actually, I will insert for all three assumptions.

Under the assumption I will talk about, the employment assumption No. 2, the one in the middle, we start with a balance this year of $19.3 billion. And under current law, that goes to $34 billion.

Under the bill we are getting ready to pass—and I can count votes; frankly, I could count votes before this week started—that trust fund balance goes from $19 to $8.4 billion. Instead of being $34 billion, it goes to $8.4 billion. That is the bill we are getting ready to pass.

I wish I could wake up all my colleagues, most of whom have not read this bill, most of whom had nothing to do with drafting the bill. This is the first time I can recall in my 21 years in the Senate that we have had a bill that was totally written by special interest groups. In this case, railroad unions and management got together and said: Here is our bill, don't touch it. Don't have a hearing on it.

They didn't have a hearing in the House. We didn't have a hearing in the Senate. I asked for a hearing in the Senate Finance Committee. We did not get it. We had a markup but it was already railroaded. There were not going to be any amendments. There was one amendment adopted in the House or the Senate. That was the amendment dealing with scoring. We are not going to count it. It didn't say we will waive the Budget Act. It said will not count it, which I think is even worse than just waiving the Budget Act. Why have a Budget Act if you are going to have $15.3 billion in budget outlays and it doesn't count?

We just had a vote on that by Chairman DOMENICI and ranking member CONRAD, and we lost. We lost that vote. So the special interest groups are together. And they said: Let's leave it in. They didn't request that amendment. It is interesting; that was put in by the House. So that was the only amendment they put in.

It was a bad amendment in my opinion. We are going to accept that, and we are going to keep the bill. We will not touch it. I think we are making a mistake.

You ask: Why are you still fighting this? You know this bill is going to pass? Sure, I do. But I want to make a statement. I want to show that we can do a better job. We are not beholden to the special interest groups. We are beholden to taxpayers. This is a Federal statute. We are changing Federal law. How many CEOs of the railroad companies or how many union members were elected to the Senate? I don't know, but they wrote the law. They wrote the bill that is going to become law.

I don't think they did a very good job. If I thought they did a good job, maybe I would cosponsor the bill. I don't think they did a good job. History will tell.

I will make a prediction. I am not going to be here in 20 years. I guess if I was as studious and healthy as Senator THURMOND, maybe I could be. If I was fortunate enough to be reelected by the people of Oklahoma, maybe I could be. Agewise it is possible, but it is not possible after consulting with my spouse. But 20 years from now, if not well before that, Congress is going to have to readdress this issue because we are going to have a big problem.

As this chart shows—I am borrowing Senator BAUCUS's chart, and I thank him—we are going from 6 years of benefits down to a little over 1, we think. That is in 20-some years.

Then Senator BAUCUS said: Wait a minute. Way out in the outyears, it goes way up. Who knows? I know they are going to have problems when we get into the year 2021, 2022, 2023, 2024, 2025 and 2026. It goes way down. The trust fund actually falls by 65 percent. When you have that trigger, payroll taxes have to go way up. Payroll taxes have to go up by 69 percent.

That is because in the bill we say if it triggers at a certain point, we are going to have a tax increase, a tax increase that is paid by the railroad companies. And it goes from 13.1 percent to 22.1 percent.

Senator GRAMM said they are having problems. They have shrunk their labor force significantly. They are not going to be able to handle that kind of increase. They will come back to Congress and say: Here, it is yours. The trust fund is broke. It didn't work out very well, so pay our employees. And because the Railroad Retirement Act is a Federal statute, it becomes an entitlement.

Many people here say it is not that. No, they won't be coming back to us.

I predict that within 20 years they will be coming back to Congress and saying: We need a fix. We need a little bump. We need a little transfusion. Maybe the transfusion will be from Social Security. They are already getting it. I wonder how many of our colleagues know that they get billions of dollars from Social Security, basically from tier 1 going into tier 2, to pay their benefits. It is in the bill. I have an amendment that will address that. Possibly we will consider that soon.

Right now I offer an amendment that I urge my colleagues to look at, consider, and hopefully pass. The triggering mechanism to have a tax increase is if the trust fund goes so low that there will be a tax increase. If you actually get low enough to pay benefits for 4 years, you have a tax increase. It is automatic. It is in the bill. It would become law soon. OK. That makes sense. But you ought to have some kind of triggering mechanism so if we keep the trust fund balanced, we won't be coming to the taxpayers for general revenues.

What is wrong is the calculation. You look back over 10 years to figure that average. By looking over 10 years, if you just see the revenue estimates, they estimate that the trust fund balance goes from a high, somewhere in the neighborhood, under present law, of about $27 billion. Under the Daschle bill or the railroad bill we are getting ready to pass, the railroad trust fund runs about $23 billion. Then the next several years it falls to 19, 18, 17, 16, 13, 12, 10, 8. You are looking at a 10-year average. If you look at a 10-year average and you are averaging 8 and averaging 20, maybe it won't trigger the tax increase until about the year 2021, 2022, 2023. In other words, it allows the fund to fall from about 6 years' payments down to a little over 1 before the tax increase is triggered.

That is too late. That doesn't allow the trust fund to have enough time to recharge, to build, to have a cushion to earn interest or to earn dividends. In other words, we allow this dip to go too low.

The effect of my amendment would be to smooth that out. Possibly it would smooth out the payroll tax increase. In other words, instead of looking back over 10, we would look over 5. So your average, once you got on the

decline, it would say, if we get much lower, we will have to have a tax increase sooner to keep that fund from going so low. That is too big of a dip. That is too dangerous for railroad employees or retirees to have the fund balance dip down as low as 1.3 annual payments.

This is under the middle scenario. If you look under the pessimistic scenario, it goes in the red. Under the pessimistic scenario, the whole trust fund goes totally in the red by the year 2022. It will not be able to make payments. It will need either general revenue funds or it will have to cancel increases or suspend payments or whatever.

In other words, there is a scenario here where the fund is totally broke in 20 years. That is not acceptable. I don't think it is acceptable. I think we should protect railroad retirees. We have too much of a variable by using a 10-year average before you have a trigger for a tax increase. So my suggestion is, let's make it over a 5-year average. If you get on a down slope, the trust fund starts falling in value, we won't have to wait another 8 years before you trigger a tax increase.

That is the essence of my amendment. It is a friendly amendment. It is not an amendment to gut the bill. It is not an amendment to say we don't want railroad retirement and we are not going to have railroad retirement. It is an amendment that says they put together a deal that was negotiated between labor and the employees or the unions. They may have cut a good deal for the employers, basically saying let the fund go almost bankrupt before you trigger a tax increase.

We will do that in 20 years. Guess what. Everybody running those companies will all be retired by then, and Members of Congress will all be gone by then. Let somebody else worry about that. So these big tax increases are not triggered—it is interesting, they are not triggered until 15 years from now, but then they are pretty big. It is not a 10-percent increase in payroll taxes, not a 20-percent increase; they keep the tax rate basically at 13.1 percent for about the next 15 years and, bingo, you go from 13.1 percent to 22.1. That is a 69-percent increase in payroll taxes.

I just can imagine—as a matter of fact, I will make this prediction: When this happens 15, 20 years from now, somebody is going to come back—the railroad companies will say: We can't afford that. That will bankrupt us. They will basically say: Taxpayers, you handle it or liquidate the railroad so they can pay these benefits.

You are in that kind of scenario. That will happen. That is too Draconian of an increase because we allowed the trust fund to get too low before we triggered the changes. I say, let's trigger the tax increase. Instead of over a 10-year average, do it over a 5-year average. That makes a lot more sense. We are not holding these funds to fiduciary standards. I have an amendment to do that. We don't hold them to fiduciary standards that we do all other multiemployer plans. Maybe we should.

I have told some of my colleagues who have been voting and saying they want to take up the bill, all right, we are on the bill. I want to consider the bill. They say let's consider amendments. Well, this is an amendment. This is an amendment that would help the security of the trust fund, make sure it doesn't get down too low. We would have the automatic trigger moved up a little bit. That is the essence of the amendment. Instead of letting the fund dip down quite so low—before it goes down too low, below the threshold of four times annual payments, we would trigger the tax increase a little earlier so it doesn't go down quite so low. That is the essence of the amendment.

We want to save the trust funds so the funds will be there to make the payments and not bankrupt the railroads at the same time. Now, maybe if, in the interest in this bill, the railroad companies and the unions would have come before Congress and said, yes, let's have a hearing on this bill, I could have asked them questions. My guess is the railroad unions would say, yes, I like that idea. They would probably say I like that idea because we don't want to jeopardize our payments. If somebody is retired at age 60, and they happen to be age 80 and they are reading the reports, they would say, the trust fund went down to almost bankrupt. They can barely make payments this year. They are not going to get a lot of comfort over that. So the idea is, let's try to make greater protection of the trust fund.

Mr. President, I want to have printed in the RECORD a table that I have compiled, my staff, of the three various employment assumptions, 1, 2, and 3.

I ask unanimous consent that this table be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RAIDING THE RAILROAD RETIREMENT TRUST FUND

[Daschle amendment 'versus' current law (in millions of dollars)]

Year	Railroad Retirement Trust Fund balance employment assumption 1				Railroad Retirement Trust Fund balance employment assumption 2				Railroad Retirement Trust Fund balance employment assumption 3			
	Current law	Daschle	Change	Percent change	Current law	Daschle	Difference	Percent change	Current law	Daschle	Difference	Percent change
2001	19,383	19,383			19,363	19,363			19,341	19,341		
2002	20,412	20,504	92		20,339	20,431	92		20,254	20,347	93	
2003	21,484	21,351	(133)	−1	21,332	21,194	(138)	−1	21,135	21,014	(121)	−1
2004	22,594	22,027	(567)	−3	22,304	21,756	(548)	−2	21,973	21,446	(527)	−2
2005	23,745	22,698	(1,047)	−4	23,285	22,273	(1,012)	−4	22,763	21,790	(973)	−4
2006	24,750	23,170	(1,580)	−6	24,075	22,549	(1,526)	−6	23,312	21,846	(1,466)	−6
2007	25,951	23,753	(2,198)	−8	25,011	22,887	(2,124)	−8	23,954	21,913	(2,041)	−9
2008	27,176	24,263	(2,913)	−11	25,915	23,100	(2,815)	−11	24,506	21,799	(2,707)	−11
2009	28,417	24,710	(3,707)	−13	26,777	23,191	(3,586)	−13	24,954	21,501	(3,453)	−14
2010	29,657	25,096	(4,561)	−15	27,574	23,158	(4,416)	−16	25,271	21,011	(4,260)	−17
2011	30,724	25,213	(5,511)	−18	28,129	22,784	(5,345)	−19	25,273	20,107	(5,166)	−20
2012	31,983	25,430	(6,553)	−20	28,800	22,432	(6,368)	−22	25,314	19,145	(6,169)	−24
2013	33,257	25,567	(7,690)	−23	29,404	21,916	(7,488)	−25	25,205	17,930	(7,275)	−29
2014	34,550	25,626	(8,924)	−26	29,939	21,228	(8,711)	−29	24,940	16,448	(8,492)	−34
2015	35,868	25,613	(10,255)	−29	30,406	20,366	(10,040)	−33	24,509	14,688	(9,821)	−40
2016	37,016	25,337	(11,679)	−32	30,601	19,130	(11,471)	−37	23,707	12,441	(11,266)	−48
2017	38,423	25,224	(13,199)	−34	30,945	17,935	(13,010)	−42	22,943	10,237	(12,706)	−55
2018	39,916	25,103	(14,813)	−37	31,259	16,600	(14,659)	−47	22,034	7,769	(14,265)	−65
2019	41,524	24,998	(16,526)	−40	31,562	15,136	(16,426)	−52	20,990	5,166	(15,824)	−75
2020	43,278	24,933	(18,345)	−42	31,876	13,723	(18,153)	−57	19,823	2,691	(17,132)	−86
2021	45,014	24,734	(20,280)	−45	32,027	12,023	(20,004)	−62	18,353	309	(18,044)	−98
2022	47,142	24,808	(22,334)	−47	32,420	10,604	(21,816)	−67	16,977	(2,060)	(19,037)	−112
2023	49,512	24,983	(24,529)	−50	32,890	9,660	(23,230)	−71	15,529	(4,599)	(20,128)	−130
2024	52,149	25,268	(26,881)	−52	33,455	8,704	(24,751)	−74	14,021	(7,316)	(21,337)	−152
2025	55,079	25,687	(29,392)	−53	34,132	8,495	(25,637)	−75	12,461	(10,206)	(22,667)	−182

Source: Railroad Retirement Trust Fund actuaries. Provided by Senator Don Nickles, 12/4/01.

Mr. NICKLES. This compares present law to this bill, under those assumptions. Present law under the employment assumption, the middle assumption, shows in current law a trust fund balance of $19.3 billion today and $34 billion in the year 2025. Under the Daschle amendment, or the bill we have before us, we start at $19.3 billion, and in 25 years we end at $8.5 billion. In other words, the trust fund is only about—well, it is 75 percent below where it is today, or where it would be under current law. That is assuming a 21-percent payroll tax in the last few years. So even with enormous payroll tax increases, the fund is still in serious jeopardy of being able to pay benefits, being able to provide security and assurances that there is going to be money there for retirees who maybe

worked most of their lives and depend on it.

I have put this in the RECORD because I want people to see it. I want railroad management companies to look at these scenarios and realize, OK, we are trading current law for this. This may be a great deal for them for the intermediate time. People may say: Why are you doing this? Railroad companies will save a few hundred million dollars a year—over 10 years, $4 billion; over 15, 17 years, $17.5 billion. Their taxes are going to be cut. I will put that into the RECORD. Their taxes are going to be cut over $400 million and that gets larger every year. That is what the companies get by reducing the payroll tax from present law, $16.1 billion, to 13.1 percent, and then it eliminates another supplemental benefit tax that boils down to, I think, 26 cents an hour. They eliminate both of those taxes and save about $400 million a year—''they'' being maybe a dozen railroad companies. They save $400 million a year.

What do the employees get? The employees get a pretty good deal. They get a deal because they have tier 1 benefits that are supposed to be equal to Social Security; they pay the same tax. The Social Security tax is equal to 6.2 percent for employees, 6.2 percent for the employer. They pay the identical tax, same tax as everybody else in America. But they don't get the same benefit. Under Social Security benefits, people receive their full retirement benefits at age 65, which is going to age 67. Under railroad retirement, they get to receive 100 percent benefit now at 62. This bill makes that 60. They pay the same tax with more benefit. You get zero if you retire at age 60 under Social Security. If you retire at 62 under Social Security, you get 80 percent of the benefit you were expected to receive at age 65. That 80 percent is being reduced under current law to 70 percent over the next several years. So under Social Security, a person who retires at 62, many years from now, gets 70 percent; and under railroad retirement, they get 100 percent benefit at age 60—and they pay the same taxes. There is a big difference there.

What about the survivor benefit? That is a great big benefit increase for railroad retirees. It costs money. How much does it cost? Guess what. It costs about $4 billion a year over the next 10 years. They also have another little benefit: tier 2 benefits, non-Social Security benefits, the other railroad retirement benefits, a survivor benefit equal to 100 percent of what the employee was receiving. That is pretty nice because in most private pension systems the survivor receives 50 percent. I wish they could pay that much and more. Who is going to have to pay the bill? What are those benefits? They add up to $4 billion over the next 10 years. That is about $400 million per year in a couple of years. So it totals about $4 billion over the next 10 years. It just happens to come out even that the railroad companies and employees come out with the same amount of benefit. That is what they mutually agreed upon. Well, what they didn't do, in my opinion, they didn't protect the fund. The fund goes almost bankrupt before this triggering mechanism to make sure the fund stays solvent is kicked in. That is not to get too technical, but they have a 10-year lookback average before, and if that average gets below 4 years' annual payments, then they have an automatic tax increase. That waits too long and allows the fund to go down to 1.3 annual payments before the tax is really kicked in—maybe it is kicked in in the last couple years, but it doesn't catch up.

So the fund is in jeopardy. The payments are in jeopardy. The whole concept of paying railroad retirement is in serious jeopardy because we didn't do a good enough job, when we created this change, to make sure it would be solvent. So I have an amendment—really a simple amendment—that says instead of looking back over 10 years, look back over 5 years. I think it is a reasonable amendment, one that if the railroad employees could look at, they would support in a minute, absolutely, totally, completely. It is a good provision to try to make sure there will be a trust fund there instead of allowing it to dip so low.

I urge my colleagues to support the amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, basically, this amendment offered by the Senator from Oklahoma is just unnecessary. In fact, he used my chart. My chart makes a case that is much worse than would occur under the bill.

I am just trying to present the facts so people can make a reasonable judgment. I looked at the balance on a year-by-year basis. That is what that chart shows. Under the bill before us, there is a 10-year rolling average lookback which means that lower level on the chart would never get that low under the bill. The Senator from Oklahoma wants to change it from 10 to 5. Even 5 will not get that low.

The main point is that many people have looked at this issue from different directions and have concluded that this legislation is a good way to deal with the excess balance in the railroad retirement trust fund. By increasing some benefits, by lowering taxes, and yet building in some automatic auditing devices, that comports with requiring the actuary to report whether the trust fund is actuarially sound in the current year and succeeding years under various economic assumptions.

I do not know how much better we can do than that. It is very difficult to predict the future. I remind my colleagues that CBO, in trying to make 10-year estimates, let alone the 20 years we are talking about here, has varied its 10-year totals by $1 trillion over a 6-month period of time. It is because economic assumptions change so quickly, so often.

We are in a more uncertain world than we were, say, 10, 15, 20, 30, 40 years ago. The actuaries have done the best they can with what they have. They made three different projections. One is pessimistic, one is intermediate, one is optimistic. The assumption we have been talking about is the intermediate. It is not the pessimistic, not the optimistic; it is the intermediate.

I submit that with the annual reports from the actuaries coming to the Congress, we will know whether we are getting into trouble or not.

This is the best solution we could come up with at this time, and it is done on a fair, reasonable basis.

Taking a more pessimistic analysis than provided by the analysis of the Senator from Oklahoma, the worst case is about the year 2020, 2022, and that is when the ratio is 1 to two-thirds, balance to costs. The Social Security actuary says we can get as low as 1 to 1. We are not 1 to 1 today in Social Security. The Social Security actuary says that is the lowest benchmark with which he deals.

Under our intermediate assumptions, we do not get that low. We get 1 to two-thirds, 1 to 1. I suggest we are even too pessimistic.

I asked the question of the chief actuary how the economic estimates have been on employment levels, which is the most difficult estimate to make. His response is: Employment levels over the last 5 years—railroad employment—have decreased an average of .9 percent per year. He said this decrease is better than assumption 1. Assumption 1 is the most optimistic assumption. He says for the last 5 years, the actual decrease in employment was .9 percent per year, which is better than provided for in assumption 1. We are talking about the intermediate, not assumption 1.

He also says employment levels over the last 10 years have decreased an average of 1.8 percent which falls somewhere in between assumption 1 and assumption 2.

We have been a little too conservative actually. The main point is, who knows what the world is going to be like in the year 2020? The Senator from Oklahoma takes the most pessimistic assumption and says we cannot have that. My Lord, if we are in that bad a shape in 18, 19 years, I can tell my colleagues we are going to be doing a lot of other things in this body in addition to railroad retirement. I have confidence in the Congress, in the system. We analyzed this thoroughly. We will do well.

Mr. NICKLES. Will the Senator yield for a question?

Mr. BAUCUS. In just a second. I also say this measure before us has 73 cosponsors. It was considered last year in September in the Finance Committee. We had 20 amendments in the Finance Committee. It passed by a very large margin in the House.

In sum, this amendment is unnecessary, and it is also mischievous because

if it were to be adopted, this bill would have to go to conference. There would be no railroad retirement bill this session, and there could be no railroad retirement bill this Congress.

I urge Members not to agree to this amendment.

Mr. NICKLES. Will the Senator yield for a question?

Mr. BAUCUS. Yes.

Mr. NICKLES. The Senator said I took the most pessimistic assumption. I correct him. All my statements and the charts are on the middle assumption, not the most pessimistic assumption. The most pessimistic assumption says this bill has real problems. I did not use that. I used the middle assumption.

Mr. BAUCUS. I stand corrected. Mr. President, most of his analysis was on the intermediate assumption. At one point, he was talking about the most pessimistic assumption. My response was to both.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I do not want to inflate anything. I am very particular on being factual. I want to correct a mistake I made in my earliest debate. This came up, frankly, when those of us who had some concerns about the legislation were informed of it on Monday and we were to debate it on Tuesday. I cited from memory that this fund had actually paid out more every year than it had taken in, to the tune of about $90 billion. That was not factually correct.

The facts are the fund has paid out more than it has taken in every year since 1957. For the last 43 years, it has actually received payroll taxes, contributions from employees, and it has made benefit payments. The benefit payments have exceeded payroll taxes and company contributions every year for the last 43 years, so I was correct from 1957 on. I wanted to state that, and I will insert that in the RECORD as well.

I want to be factually correct. I want my colleagues to understand that when I state that 20 years from now there is going to be a big problem if we do not do something because we are getting ready to set up a system that allows this fund to almost go bankrupt, almost to where they cannot pay the benefits before we let the tax increase trigger.

Some people have said: This is self-funding. This is great. We are going to keep these fund balances between four and six times annual payments for the next 75 years. If the trust fund balances go up, they make good investments, they invest in a lot of stocks that did exceptionally well, great; they can have payroll tax cuts.

If they do poorly, if they get below that four, we will have automatic payroll tax increases on the employer, not the employee. Fine, if that works.

Under the middle assumption, the tax increases are not triggered until well after the fund is depleted because they use a 10-year average. So they are on a sliding-down scale before the tax increases trigger, so the fund almost goes bankrupt. It goes down to about 1.3 annual payments before they have the tax increases, and then they are in serious trouble.

Somebody said this is the law; this does not allow general fund financing, which is one of the reasons I happened to be concerned about it. Somebody asks: Why are you so concerned? Ultimately the Federal Government could be liable. You say: Why? Let me read a couple statements.

I like to think the railroad companies would take care of their employees, and if they did, I couldn't care less what benefits they pay. If this were out of the Federal system, they could pay whatever benefits they want. I do not care if they have retirement at age 40 if they pay for it and the Federal Government is not liable for it. I do not care if they have early retirement.

I do not care if they have a spouse benefit that exceeds 100 percent if they pay for it.

What I disagree with strongly is if they greatly increase benefits and underfund the system and then say: If this does not work out, taxpayers, you pick up the cost. Why should we be asking people in Minnesota or Oklahoma who make $40,000 a year or $20,000 a year to increase their taxes to pay benefits for people who make a lot more money than they do and enable them to retire at age 60 when people in Oklahoma do not get to retire until they are 65 or 67 and then they receive benefits far greater than people in Oklahoma receive. I do not want the people of Oklahoma to have to pay taxes for them to do that.

I will read a couple quotes. Supporters insist the amendment places responsibility on future benefits on the railroads in the event investments do not work out.

I will read what the railroad industry thinks of its responsibility. This is a quote from the United Transportation newsletter dated May of 2000:

> The legislation also requires that the railroads would be responsible if the trust fund falls below a certain level. If this happens, a tax would automatically be placed solely on the carriers in order to replenish the fund. In order to add a final assurance to the integrity of the fund, it is still bound by the full faith and credit of the United States Government. They would be required to pay the obligations of the fund if, for some reason, the other safety nets in place were insufficient.

Earlier this year, the Lincoln Journal Star—on 8/15 of this year—stated:

> Other unions and the Association of American Railroads are promoting the bill as a self-financed shoo-in. In fact, the U.S. government would still back the retirement fund, acknowledged Obie O'Bannon, vice president of legislative affairs for the association. But, he pointed out, the ''automatic tax ratchet'' would require the railroads to kick in more money any time the fund's balance is below four times annual benefits, so that's protection that would mean all U.S. railroads would face insolvency before the Federal liability applies.

I don't want the railroad to go insolvent, but I don't want the Federal liability to apply either. I don't want our taxpayers across the country to have to bail this system out because we did a crummy job of legislating in 2001, and in 20 years we say: Well, we made a mistake. Darn, Senators GRAMM and NICKLES were right. Now the railroad companies are faced with a huge tax increase they cannot pay.

The fund is raising towards insolvency. Taxpayers, would you please give a supplemental. Let us raid a little more from Social Security—which they do under this bill, as well. There is about a $2 billion transfer from Social Security to help pay tier 2 benefits. That is interesting. I thought we would protect Social Security. But we have a Social Security bailout for the bill. Maybe we will address that shortly.

How else do we fix the fund? Are we going to write a check? Is the Federal Government going to write the check? I don't know. Some people in the unions say that is what we will do. Some in management say that is what we will do. I don't think that is the solution.

Let me read the last sentence of the vice president of legislative affairs for the Association of American Railroads:

> All railroads would face insolvency before the federal liability applies.

I don't want the railroads to become insolvent, nor do I want the Federal taxpayers to become liable for all the generous benefits. These benefits, in comparison to retirement benefits in the private sector, are very generous—overly generous. Find other private pension systems that offer full retirement at age 60. You won't find very many. Find other pension systems that offer spousal benefits or survivor benefits at 100 percent. You won't find very many. I doubt the department stores offer these kinds of benefits. Manufacturing companies don't offer these benefits. Yet we are getting ready to do it.

Now I read that if it doesn't work out, taxpayers ''will bail us out.''

I won't be in the Senate, or I doubt I will be in the Senate, 20 years from now, but if I am, I guarantee I will be opposing a taxpayer bailout of this industry. And conversely, I hope there will be others opposing this. This will happen. It is a prediction. It will be in the CONGRESSIONAL RECORD.

I hope I am wrong. I hope they find investments that do enormously well. They might find good investments such as Intel, 10 years ago, going up in multiples. They might also find investments such as Enron. I am concerned. Everybody indicated this is not so bad.

I have not raised this on the general issue of debate. This investing in private funds is a good idea. I love for private individuals investing for themselves to buy parts of different companies. I am reluctant to think: What will this board invest in? Mr. President, $15 or $16 billion is a lot of money. What companies will they buy?

Are they going to be politically correct? Would they buy Microsoft? Our Government was suing Microsoft. I guess they still have suits pending against Microsoft. Maybe that is not politically correct. What about tobacco? Our Government in the previous administration was going after tobacco. Philip Morris was a good investment the last year. Microsoft was a good investment the last year. Would they be buying utility companies? A lot of utility companies are being sued for a lot of different reasons. Do they have to wash their hands from investments?

I have concerns when you have a board comprised of rail management representatives, union representatives, and they select one additional person they mutually agree upon to invest billions and billions. I have reservations about that. That is not what I raised this issue on.

For the information of colleagues, we will vote on the Gramm amendment and the Nickles amendment starting around 4:30. For the information of our colleagues, we will have the joint prayer service, which we desperately need, starting at 5 o'clock. The amendment I am offering says, before we allow the trust funds to be depleted on such a steep decline, if a 5-year average gets below 4 years, annual payments trigger the tax increases at that time instead of using the 10-year average. That would keep this a lot more shallow. It will keep the fund probably well above 2 or 3 in the annual balance statement, certainly above 2—not allowed to dip down so deep. That is for the protection of the railroad retirees and for the protection of taxpayers, to make sure we will not have to do what the United Transportation Newsletter said: We can always fall back on the full faith and credit of the U.S. Government.

I hope that doesn't happen. I will work energetically to see it doesn't happen. If we keep the trust balance more level, it will not happen.

I urge my colleagues to support the amendment that would say, instead of having a 10-year lookback before you trigger an automatic tax increase, do it over 5 years so we don't allow the trust fund balances to go as low as they are now projected to by the railroads' own actuaries of the pension plan.

I yield the floor.

Mr. BAUCUS. Mr. President, I don't see any other Senators wishing to speak, and the leadership would like to schedule these votes around 4:30, so we have 15 more minutes. I will take that time to make a couple of points.

First, this amendment offered by the Senator from Oklahoma simply is unnecessary. It is true that there is a dip. The fact is, on a yearly basis the dip is as represented on that chart, but the bill before the Senate will not be as low as represented on the chart. Even if it is as low as represented on the chart, this is unnecessary.

It is true that there is a question in the year 2021. There are a lot of questions. We have to do the best we can with what we have. The vast majority of Senators and House Members have considered and concluded that this is a fair way to deal with this issue. This issue, if it arises, will not arise, according to the basis of this debate, for another 20 years. So we are talking about what may or may not occur in 20 years. Because of the annual reports provided in the bill and the actuarial estimates on an annual basis, when it gets closer to 20 years from now, we will have an idea whether or not this is working. If it is not working, we will make adjustments. This amendment is totally unnecessary.

A couple of other points. The Senator mentioned there is a lot of Social Security money going into railroad retirement. I will address that. It is a point that is not commonly understood. In America today, clearly, there is a wide variety of industries. Some are new young industries, service industries; some are older, mature industries, such as railroad or mining industries. Industries come and go. They expand. They are just different, which means they have different ratios of the number of employees paying into Social Security compared with retirees receiving Social Security in that industry.

Social Security, of course, doesn't collect and pay on an industry basis. It collects and pays on a national basis. It is a large pool of Americans, American workers paying into Social Security, and there are a large number of retirees in America receiving benefits.

So as a practical matter, if we look at an industry, say a mature industry where there are fewer employees paying into a Social Security trust fund, and a lot of retirees receiving benefits, in effect there is a transfer of Social Security to that industry away from a younger industry where there are so many more employees paying in and so many fewer retirees receiving benefits. In effect, that is what happens today in America under Social Security. That is what is happening today in railroad retirement under tier 1, which is essentially Social Security. Because it is a mature industry and because there are fewer employees—railroaders in the industry, compared with the number of retirees proportionate to the average industry in America—there are transfers in effect to railroad retirees under tier 1 as is the case for all industries and for all workers in America today. There is no difference. There is no difference.

So it sounds as if Social Security is helping out unfairly, enriching railroad retirees under tier 1. It just is not because the Social Security tier 1 employees are treated the same way as are employees in a mature industry receiving benefits.

The second point is it has been suggested here that it is not fair to lower the retirement age to 60 from 62. After all, the retirement age under Social Security is higher. It has been suggested that it is not fair to vest earlier, 5 years instead of 10 years; that it is not fair that survivor's benefits for a survivor would be 100 percent instead of, say, 45 percent. And the point is made under Social Security retirees' survivors get benefits at a later age. So isn't this some special deal that railroad retirees are getting? It is not fair.

On the face of it that is a question. But, as they say, that is only half of the story. In the rest of the story, the facts are that tier 2 in railroad retirement is very comparable to a private pension plan that a company may have for its employees. The company's employees—retirees, say—would receive benefits under Social Security, tier 1 in the railroad system, and they receive benefits under their pension plan, tier 2 in the railroad industry. Many pension plans provide for an earlier retirement age—not 65 or up to 67, as required in Social Security, but at an earlier age.

Those people pay Social Security. Those are Social Security retirees. How does all that work out? What is happening here?

It is very simple. In the private sector pension plans participate in what is called a bridge with Social Security; that is, under Social Security the retirement age is 65, but under the private pension plan if you fully vest—say 30 years employment at, say, 60—the private pension plan makes up the amount that Social Security does not pay. It is called a bridge. That is how it works and it makes sense. If Social Security does not provide those benefits for early retirement age, then the private pension plan provides the benefits. That is what is happening in this legislation. It is just the same.

That is, tier 2 would provide the extra benefits under a bridge to tier 1, in effect. Actually, they don't provide it in tier 1. It is just that the extra benefits go to the retiree to make up the difference.

I submit, railroading is pretty hazardous. It is a dangerous industry. And a 62 retirement age—excuse me, a 60 retirement age after 30 years of hard work as a railroader certainly seems fair to me. There are other industries not as dangerous or demanding, but this one certainly is. It is a dangerous industry.

It has been suggested that ERISA provisions ought to apply. Railroad pensions should be fully funded, and this is not fully funded—as is the case under ERISA, which is what applies to most private pension plans.

First of all, Social Security is not fully funded. Maybe it should be. We would like to work in that direction, but it is not today. But more important, to fully fund the railroad retirement plan would require the injection of $40 billion. Then it could be fully funded. We do not have $40 billion. I think the total revenue of the railroad system in America is about $40 billion per year, and I think the income per year is close to $4 billion in the railroad industry.

Still more to the point, this trust fund, tier 2, would have about $40 billion today, an extra $40 billion, if Congress in the past had lived up to its word. It would have it. What am I saying?

Many years ago, Congress—I think it was in 1950—passed something called dual benefits. The effect of it is that railroad retirees got dual benefits. They got twice the benefits.

Clearly, that got to be a lot of money for the trust fund. If they get double benefits for Social Security compared with other retirement systems, that adds up pretty quickly. Congress decided to change that, in 1974—to end that. Congress said we are going to end this dual benefits idea. It is just too expensive. It is just too much.

But we, Congress, will grandfather in prior retirees so they do not get less than they thought they were going to get. So as a practical matter, that would have been—those benefits paid prior to 1974 would have been about $3.5 billion. If the railroad retirement system had that $3.5 billion—they did not get it, Congress did not give it to them—today that would be worth about $30 billion, $40 billion.

If Congress had lived up to its word in the past, we could come close to having enough dollars in the fund to make it fully funded and ERISA applicable. But ERISA cannot be applicable today because it is $40 billion short because Congress didn't live up to its word. Nevertheless, I think the provisions in this bill requiring all these reports assure us of notice, adequately in advance, whether or not there is going to be a problem during the next 20 years. It could be just the opposite. It could be a lot better than we expect. But if it is worse than we expect, there will be more than enough benefits for Congress to be able to change it.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I will ask unanimous consent to have printed in the RECORD the ''Railroad Retirement and Survivors Improvement Act of 2001 Progress of the Railroad Retirement and Social Security Equivalent Benefit Accounts under Employment Assumption II.''

It basically says let's transfer $1.586 billion in from Social Security, or the tier 1 fund, into the tier 2 fund. Social Security is subsidizing tier 2 benefits.

I also state to my colleagues, a real solution would be if tier 1 is supposed to be equivalent to Social Security, and people want that—and then as Senator BAUCUS says, tier 2, if they want to subsidize Social Security for a lower retirement, they can do that—let's just put them under Social Security so we do not intermingle these funds. There is a little raiding going on. Under this bill, there is about $2 billion, then, $80-some million almost every year, and then it increases to almost $100 million every year that is transferred from tier 1 to tier 2.

I do not like it. We are raiding the Social Security fund.

I ask unanimous consent to have this table printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE 3–II.—RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2001

[Progress of the Railroad Retirement and Social Security Equivalent Benefit Accounts under Employment Assumption II (dollar amounts in millions)]

Calendar year	Interest rate (percent)	Tier 2 tax rate (percent)	Railroad Retirement Account					Social Security Equivalent Benefit Account						Railroad Retirement Trust Fund			Combined balance end year
			Benefits and administration	Tax income	Other inc/exp	Transfer to RRTF	Balance, end year	Benefits and administration	Tax income	Interest income	Other inc/exp	Transfer to RRTF	Balance, end year	Benefit payments	Income	Balance end year	
2001	5	21.0	$3,127	$2,870	$1,056	.....	$17,913	5,265	2,225	$77	$2,653	.....	$1,450	.....	.....	.....	$19,363
2002	8	20.5	57	2,816	.....	$20,673	.....	5,335	2,254	73	3,145	$1,586	.....	$3,371	$23,802	$20,431	20,431
2003	8	19.1	59	2,682	.....	2,623	.....	5,395	2,279	17	3,181	82	.....	3,554	4,317	21,194	21,194
2004	8	18.0	62	2,582	.....	2,521	.....	5,489	2,307	18	3,247	83	.....	3,706	4,267	21,756	21,756
2005	8	18.0	64	2,621	.....	2,557	.....	5,611	2,337	18	3,341	85	.....	3,830	4,348	22,273	22,273
2006	8	18.0	67	2,661	(84)	2,510	.....	5,735	2,367	17	3,351	.....	.....	3,971	4,247	22,549	22,549
2007	8	18.0	69	2,703	89	2,722	.....	5,854	2,395	19	3,440	.....	.....	4,144	4,483	22,887	22,887
2008	8	18.0	72	2,746	2	2,676	.....	5,991	2,423	19	3,637	89	.....	4,334	4,547	23,100	23,100
2009	8	18.0	75	2,789	.....	2,714	.....	6,160	2,453	20	3,781	93	.....	4,511	4,602	23,191	23,191
2010	8	18.0	78	2,833	.....	2,755	.....	6,353	2,485	20	3,944	96	.....	4,682	4,649	23,158	23,158
2011	8	18.0	81	2,879	(90)	2,708	.....	6,555	2,517	20	4,019	.....	.....	4,864	4,490	22,784	22,784
2012	8	18.0	84	2,926	97	2,939	.....	6,769	2,551	22	4,201	5	.....	5,052	4,700	22,432	22,432
2013	8	18.0	88	2,975	.....	2,888	.....	6,997	2,588	22	4,492	106	.....	5,232	4,716	21,916	21,916
2014	8	18.0	91	3,026	.....	2,934	.....	7,235	2,626	23	4,695	109	.....	5,408	4,721	21,228	21,228
2015	8	18.0	95	3,078	.....	2,983	.....	7,477	2,667	24	4,899	113	.....	5,576	4,713	20,366	20,366
2016	8	18.0	99	3,131	(84)	2,948	.....	7,725	2,711	23	4,990	.....	.....	5,721	4,485	19,130	19,130
2017	8	18.0	103	3,184	91	3,173	.....	7,971	2,759	25	5,216	30	.....	5,842	4,647	17,935	17,935
2018	8	18.0	107	3,240	.....	3,133	.....	8,205	2,810	26	5,493	124	.....	5,940	4,605	16,600	16,600
2019	8	18.0	111	3,297	.....	3,186	.....	8,424	2,865	27	5,660	127	.....	6,017	4,553	15,136	15,136
2020	8	19.0	115	3,516	.....	3,401	.....	8,621	2,922	27	5,802	130	.....	6,074	4,661	13,723	13,723
2021	8	19.0	120	3,579	(58)	3,401	.....	8,797	2,982	27	5,788	.....	.....	6,111	4,411	12,023	12,023
2022	8	20.0	123	3,811	63	3,751	.....	8,951	3,045	29	5,951	72	.....	6,132	4,713	10,605	10,604
2023	8	23.0	123	4,393	.....	4,270	.....	9,087	3,108	29	6,087	137	.....	6,151	5,206	9,660	9,660
2024	8	23.0	123	4,473	.....	4,350	.....	9,207	3,173	29	6,144	139	.....	6,170	5,215	8,704	8,704
2025	8	27.0	124	5,268	.....	5,145	.....	9,323	3,239	30	6,195	141	.....	6,176	5,967	8,495	8,495

Source: Railroad Retirement Board actuaries, 12/3/01.

Mr. NICKLES. Mr. President, we can solve that by putting all railroad employees, like we put all new Federal employees, under Social Security. We did it. We put Members of Congress under Social Security. To me, it would help this problem so we would get away from this little financial wiggling that has been going on with this fund for a long time.

Also, I ask unanimous consent to have printed in the RECORD a table that I have that shows the benefits for employees and the benefits for railroad companies, or management, on a year-to-year basis. I alluded to this in my statement, but I wanted to have the facts with these charts substantiating my oral comments.

There being no objection, the material ordered to be printed in the RECORD, as follows:

RAILROAD RETIREMENT: H.R. 1140 AS PASSED BY THE HOUSE

[In millions of dollars]

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Reduction in Retirement Age	37	121	192	228	259	305	359	397	420	443	2,761
Expansion of Widow/er Benefits	83	92	94	95	97	100	102	104	106	108	981
Repeal of RRR Benefit Ceiling	11	14	15	16	18	19	20	22	24	26	185
Reduction in Vesting Requirements	*	*	*	*	*	1	1	1	1	2	6
New Benefits for Labor	131	227	301	339	374	425	482	524	551	579	3,933
Adjustment in Tier II Tax Rate	(59)	(198)	(329)	(362)	(366)	(374)	(379)	(383)	(384)	(386)	(3,220)
Repeal of Supplemental Annuity Tax	(59)	(79)	(81)	(79)	(77)	(76)	(75)	(75)	(74)	(74)	(749)
Tax Cuts for Management	(118)	(277)	(410)	(441)	(443)	(450)	(454)	(458)	(458)	(460)	(3,969)
Stock Market Investment of Trust Funds	15,320	(460)	(660)	(830)	(920)	(990)	(1,060)	(1,140)	(1,250)	(1,340)	6,670
Change in Deficit/Surplus	(15,569)	(44)	(51)	50	103	115	125	159	242	302	(14,568)

Source: CBO: Provided by Senator Don Nickles, 11/26/01.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that there be 4 minutes for debate prior to the vote in relation to the Gramm amendment No. 2196; that regardless of the outcome of the vote, there be 4 minutes of debate prior to the vote in relation to the Nickles amendment No. 2175 with the time equally divided and controlled in the usual form, and that no second-degree amendments be in order to either amendment nor the language that may be stricken.

Mr. REID. Mr. President, reserving the right to object, I wonder if Senator NICKLES will also agree that we have 1 minute on each rather than 4 minutes. The Senator wants 4?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. BAUCUS. Mr. President, I ask unanimous consent that the amendments the Senate gave consent to earlier be reversed so the first vote will be on the Nickles amendment No. 2175 and the second vote will be on the Gramm amendment No. 2196.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. NICKLES. Mr. President, this amendment is to help protect the solvency of the trust fund. As the chart shows, the trust fund falls under the middle scenario. The trust fund falls from about 6 years' of payments. There is enough money in the trust fund to pay 6 years' worth of benefits. Under that scenario, if we pass this bill, which we are going to do, it goes down to about 1.3. I keep hearing 1.6. I believe it is 1.3—barely enough to pay 1 years' benefit. That is because we use a 10-year average looking back. The fund has to fall so far before the tax increase is triggered.

Under this amendment, we strike the 10 years and say let us make it 5. As the fund balance starts to fall under the railroad retirement assumption, it falls all the way down to $8 billion. We pay $8 billion in benefits right now.

I am saying, let us not let it go quite that low. Let us look back over 5 because if it starts falling, that fund gets below the 4 years' payments—enough to pay for 4 years' worth of benefits—if it gets below that, let us have the tax increase triggered then. Not 10 years, it will be 5 years out.

That will keep the fund solvent for railroad retirees. It will decrease the pressure on the railroad companies later on. It also gives some protection to taxpayers. It will decrease the likelihood that there will be a bailout or a necessity for a bailout to be falling on general revenues or general taxpayers in the year—whether it is 2015, 2017, or 2021, I do not know. Let us not let the fund go all the way down to almost 1 year's payment before we trigger a tax increase. Let us do it a little bit earlier. Let us use the 5-year average instead of the 10-year average.

I used to do this work. Anybody who talks to their actuary will say that makes a lot of sense. Waiting for a 10-year average would be absurd.

I yield the floor.

Mr. BAUCUS. Mr. President, this amendment is, first, totally unnecessary. The actuaries project that the balance of the fund without this bill over 75 years will be at least one and one-thirds above the benefits paid. That is the lowest level; that is, about the year 2002, which is significantly more than the short-term actuarial balance necessary for Social Security. One and two-thirds; one for Social Security.

This amendment is totally unnecessary. It is, second, a killer amendment. If this amendment is agreed to, we will go to conference. There are not many days left in the session. There will be no railroad retirement bill passed this year and probably not in this Congress. It is unnecessary and I particularly urge Members to oppose it.

The underlying bill requires many audit reports, financial and actuarial reports on a yearly basis on the strength, viability, and the health of this trust fund. We will have plenty of time and many years in advance to see whether or not some of the dire predictions made in this Chamber are accurate.

We have a hard time knowing 10-year budgets in the budget process around here. We are talking about 20 years down the road. A, it is not necessary; B, a lot of reports, if the dire predictions do come true; and, C, it is a killer amendment.

I urge colleagues to oppose this amendment.

Mr. NICKLES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

The PRESIDING OFFICER (Mr. REED). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 27, nays 72, as follows:

[Rollcall Vote No. 348 Leg.]

YEAS—27

Allard	Frist	McConnell
Bennett	Gramm	Nickles
Bond	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Helms	Smith (NH)
Campbell	Kyl	Thomas
Cochran	Lott	Thompson
Ensign	Lugar	Thurmond
Fitzgerald	McCain	Voinovich

NAYS—72

Akaka	Bayh	Boxer
Allen	Biden	Breaux
Baucus	Bingaman	Brownback
Byrd	Feingold	Miller
Cantwell	Feinstein	Murkowski
Carnahan	Graham	Murray
Carper	Hagel	Nelson (FL)
Chafee	Harkin	Nelson (NE)
Cleland	Hatch	Reed
Clinton	Hollings	Reid
Collins	Hutchinson	Roberts
Conrad	Inhofe	Rockefeller
Corzine	Inouye	Sarbanes
Craig	Jeffords	Schumer
Crapo	Johnson	Shelby
Daschle	Kennedy	Smith (OR)
Dayton	Kerry	Snowe
DeWine	Kohl	Specter
Dodd	Landrieu	Stabenow
Domenici	Leahy	Stevens
Dorgan	Levin	Torricelli
Durbin	Lieberman	Warner
Edwards	Lincoln	Wellstone
Enzi	Mikulski	Wyden

NOT VOTING—1

Hutchison

The amendment (No. 2175) was rejected.

Mr. KERRY. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2196

The PRESIDING OFFICER. Under the previous order, there are 4 minutes evenly divided with respect to the Gramm amendment.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, this is an amendment offered by the Senator from Texas, Mr. GRAMM. I strongly urge Members to not vote for it. It is unnecessary. There are actuarial reports required in this bill to the Congress, and financials are required annually. We will know well in advance of any potential problem that may occur in 20 years. This is a killer amendment. If it passes, we have to go to conference. That means no bill this year. I urge Members not to support this amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. Mr. President, the amendment is very simple. The amendment before us says you can invest the railroad retirement trust fund, you can invest it in stocks and bonds, but you cannot spend out of it until you have earned something on the investment.

Under the bill before us, you lower the amount of money going into the fund and you raise benefits before one penny is earned, before one investment is made, and in fact you take money out so quickly that you deplete 75 percent of the trust fund before the tax on railroads has to rise from 13.1 percent to over 22 percent in order to maintain absolute minimum solvency.

The amendment before us simply says invest the money, earn income on the money, use the income to lower taxes to fund railroad retirement and to increase benefits, but don't spend the trust fund's money, spend the earnings on the money. It is an eminently reasonable amendment. It is in no way a gutting amendment. If we could have gone to committee with a bill, I believe this would have been the solution. I understand my colleagues are for the bill,

but I think this is a prudent way of doing it. Make the investments, do it exactly as the bill would do it, but don't spend the principal, spend the earnings. Don't do the things the bill calls for until you have the money in hand.

I think that is a simple principle. The people understand it. I would appreciate if they would vote for it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. BAUCUS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 21, nays 78, as follows:

[Rollcall Vote No. 349 Leg.]

YEAS—21

Allard	Fitzgerald	Lugar
Bond	Frist	McCain
Bunning	Gramm	McConnell
Burns	Gregg	Nickles
Campbell	Helms	Smith (NH)
Cochran	Kyl	Thomas
Ensign	Lott	Thompson

NAYS—78

Akaka	Domenici	Mikulski
Allen	Dorgan	Miller
Baucus	Durbin	Murkowski
Bayh	Edwards	Murray
Bennett	Enzi	Nelson (FL)
Biden	Feingold	Nelson (NE)
Bingaman	Feinstein	Reed
Boxer	Graham	Reid
Breaux	Grassley	Roberts
Brownback	Hagel	Rockefeller
Byrd	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carnahan	Hollings	Schumer
Carper	Hutchinson	Sessions
Chafee	Inhofe	Shelby
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Corzine	Kerry	Stevens
Craig	Kohl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden

NOT VOTING—1

Hutchison

The amendment was rejected.

Mr. FITZGERALD. Mr. President, I would like to bring attention to one particular segment of the railroad industry—commuter rail. As a Senator from Illinois, I have had the opportunity to become very acquainted with the excellent commuter rail system that serves Chicago and northeastern Illinois. This system—Metra—is the second largest commuter rail system in the country and is a key part of the overall, growing, commuter rail industry. Metra employs between 2,500 and 3,000 workers, nearly all of whom are covered under the Railroad Retirement Board benefit plan.

The extent of commuter rail's growth over recent decades is made clear by looking at the number of workers that it employs. Nationally, roughly one-quarter of all rail employees work for commuter and passenger rail, and it is expected that this number will grow substantially in the future.

For these reasons, I believe commuter rail, because of its growing size, importance, and impact, should be represented on the Railroad Retirement Board of Trustees that is created by this bill. As this bill moves forward in the legislative process, I hope that I will be able to work with the chairman and ranking member of the Senate Finance Committee and other conferees to ensure that commuter rail is represented on the Board of Trustees.

Ms. MIKULSKI. Mr. President, I rise in strong support of the Railroad Retirement and Survivors' Improvement Act of 2001. Finally, Congress is going to consider this important bill. I have been working to improve the benefits for our retired railroad workers for many years. Today, we can finally say that promises made are promises kept to our rail workers and their families.

The people who have made their contribution to family and to society by working on our Nation's railroads deserve a decent retirement. I know the job that railroad employees perform is very hard, very important work. Our country has an obligation to help those who have worked hard, saved, and played by the rules. That is why I am proud to have been a sponsor of Railroad Retirement Improvement legislation for many years and am proud to be a supporter of this bill.

I have been fighting to improve the benefits for railroad workers and their families since I was first elected to Congress. The retirement age for railroad workers and their spouses to qualify for railroad retirement benefits should be lowered. It is difficult for people and families to plan for their retirement in today's world, even with two salaries. That is why strengthening retirement benefits for all Americans has always been one of my highest priorities.

This bill is bipartisan. The House passed their version of this important bill by an overwhelming vote of 384–33. Seventy-four of my colleagues are cosponsors of the Senate version of the Railroad Retirement and Survivors' Improvement Act of 2001. The support for this measure is clear, and the time to act is now.

The Railroad Retirement and Survivor's Improvement Act expands benefits for the widows of rail employees and lowers the minimum retirement age at which employees with 30 years of experience are eligible for full retirement benefits to 60 years old. This legislation also reduces the number of years required to be fully vested for tier II benefits and expands the system's investment authority by creating an independent, non-governmental Railroad Retirement Trust Fund.

I urge all my colleagues to join me in standing up for our railroad retirees and their families and support this very important bill.

Mr. REID. I move to reconsider the vote by which the amendment was agreed to.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL DAY OF RECONCILIATION

Mr. REID. Senator BROWNBACK and Senator AKAKA have asked me to make this announcement. They have worked very hard on a piece of legislation which is now law, setting forth today as a National Day of Reconciliation. Members of the House of Representatives and the Senate are encouraged to attend. The meeting is taking place in the Rotunda of the Capitol as we speak. It just started. During assembly, Members of both Houses gather to seek the blessings of Providence for forgiveness, reconciliation, unity, and charity for all of the people of the United States, thereby assisting the Nation to realize its potential as a champion of hope, a vindicator of the defenseless, and the guardian of freedom.

I hope all who are able will drop what they are doing and make themselves available at the Capitol Rotunda. It will go until 7 p.m. today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to a period of morning business with Senators permitted to speak for not to exceed 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEATH OF MRS. ELISABETH THURMOND OF NORTH AUGUSTA, SC

Mr. THURMOND. Mr. President, I rise today in remembrance of Mrs. Elisabeth T. Thurmond, my sister-in-law and a valued member of the community of North Augusta, SC, who passed away Friday, November 16, 2001, at the age of 90.

Elisabeth Thurmond, who was married to my late brother Dr. J. William Thurmond, will be remembered as a caring and generous woman. She was known for volunteering much of her time to serve the people of North Augusta and she made significant contributions to her community in a host

of areas. For example, she was a charter member of Fairview Presbyterian Church and served in a variety of roles within the church, including as a trustee and a Sunday school teacher. Furthermore, Mrs. Thurmond worked to help improve the educational system of North Augusta. She was very active in school PTAs and served as the chairwoman of the North Augusta Parent Teacher Association Council that helped to establish the Paul Knox Educational Endowment Fund. In addition, she was a member of countless boards and councils and often held important leadership positions such as a seat on the Board of Directors of the North Augusta Chamber of Commerce. Clearly Elisabeth Thurmond lived a life full of civic accomplishment, and she was honored for her service as the 1981 North Augusta Citizen of the Year.

However, the impact of Mrs. Thurmond's good deeds were seen not only by the people of North Augusta but also across State lines. She was very active with the local chapter of the Girl Scouts of America for many years and, after serving as member of the Regional Board of Directors for the Girl Scouts of America, she was named a member of the national board of directors of the organization.

In conclusion, Mrs. Elisabeth Thurmond was a woman of character and integrity. She lived a life of great accomplishment and made wonderful contributions to the city and people of North Augusta. Our State is a better place because of all her hard work, and the impact she made in the lives of others will be felt long after her passing. She was a true American and a fine South Carolinian, and she will certainly be missed by a wide circle of friends.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred August 24, 2000 in Somerset, KY. Two women, while working as caretakers at a hospital, beat and abused a mentally retarded patient. The assailants, Valerie Hoskins and Crystal Wright, were indicted on criminal charges in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

CONGRATULATING IDAHO'S NATIONAL BOARD CERTIFIED TEACHERS

• Mr. CRAPO. Mr. President, I rise today to honor a very special group of educators in my home State of Idaho.

Last month, sixty-six teachers received a National Board Certification from the National Board for Professional Teaching Standards, the highest professional credential in the field of teaching. With the addition of these individuals, there are now 272 National Board Certified Teachers in Idaho.

High-quality teachers are the most important assets to any educational system. In order to gain a National Board Certification, these teachers voluntarily, often at great personal expense and sacrifice, submit to a nearly yearlong performance-based assessment. They must demonstrate their mastery in several areas including: Knowledge of subject matter; ability to effectively teach their subjects to students; and ability to manage and measure student learning. In fact, the State of Idaho recognizes teachers who gain a National Board Certification as ''master teachers.'' I commend these educators for the dedication and sacrifice it takes to successfully complete this program. Not only do they benefit in their teaching techniques, but Idaho's school children benefit through their dedication.

Each one of these teachers has touched countless lives of students. They have been diligent in the trust that has been given to them by parents throughout Idaho. It is appropriate that we honor them today and recognize how hard they have worked to achieve this certification. Sometimes these types of recognitions are only hung on walls, and that rarely provides the public acknowledgement of the achievement. For this reason, I wanted to rise today and share with the U.S. Senate how important this achievement is to the education of young Idahoans.

I ask that the names of the sixty-six Idahoans newly named as National Board Certified Teachers be printed in the RECORD following my statement.

The names follow:

Susan Alt, Boise, ID, Independent School District of Boise City, Early Childhood/Generalist.

Carleen Baldwin, Lapwai, ID, Lapwai, Middle Childhood/Generalist.

Arlene Balls, Soda Springs, ID, Soda Springs District 150, Early Adolescence/Science.

Devon Barker, Nezperce, ID, Nezperce Jt School District No. 302, Middle Childhood/Generalist.

Leslie Rae Bedke, Sugar City, ID, Sugar Salem School District 322, Early Adolescence/English Language Arts.

Marta Bidondo, Boise, ID, Meridian School District No. 2, Early Adolescence/Generalist.

Leah Bug-Townsend, Idaho Falls, ID, Idaho Falls School District 91, Early Adolescence/Social Studies-History.

Khrista Buschhorn, Aberdeen, ID, Aberdeen V, Early and Middle Childhood/English as a New Language.

William Dean, Post Falls, ID, Post Falls School District 273, Adolescence and Young Adulthood/English Language Arts.

Lisa Dreadfulwater, Nezperce, ID, Nezperce 302, Early Childhood/Generalist.

Julie Elliott, Tampa, ID, Nampa 131, Middle Childhood/Generalist.

Anne Marie Elmore, Bellevue, ID, Blaine County, Early Childhood/Generalist.

Joanna Ferris, Inkom, ID, Marsh Valley School District No. 21, Early Childhood/Generalist.

Paula Fisher, Boise, ID, Meridian Joint School District No. 2 Adolescence and Young Adulthood/English Language Arts.

Elaine Forsnes, Rexburg, ID, Madison 321, Adolescence and Young Adulthood/Mathematics.

Victoria Francis, Boise, ID, Independent School District of Boise, Early Adolescence through Young Adulthood/Career and Technical Education.

Janet Greer, Eagle, ID, Meridian School District, Adolescence and Young Adulthood/English Language Arts.

Victor Haight, Meridian, ID, Meridian School District, Early Adolescence through Young Adulthood/Art.

Connie Hawker, Pocatello, ID, School District 25, Early Childhood/Generalist.

Esther Kaye Henry, Rigby, ID, Joint School District No. 251, Adolescence and Young Adulthood/English Language Arts.

Nick Hoffman, Wallace, ID, Wallace 393, Adolescence and Young Adulthood/Science.

Katholyn Howell, Shelley, ID, Shelley School District 60, Middle Childhood/Generalist.

Susan Hufford, Boise, ID, Meridian School District, Early Adolescence/English Language Arts.

Laurel Jensen, Montpelier, ID, Bear Lake, Middle Childhood/Generalist.

Mari Knutson, Caldwell, ID, Caldwell School District 132, Middle Childhood/Generalist.

Christine Lawrence, Meridian, ID, Joint District 2, Meridian Idaho, Middle Childhood/Generalist.

Marietta Leitch, Nezperce, ID, Nezperce Joint School District No. 302, Early Childhood/Generalist.

Kim Lickley, Jerome, ID, Joint Jerome, Early Childhood/Generalist.

Eric Louis, Coeur D'alene, ID, Coeur D'alene 271, Adolescence and Young Adulthood/English Language Arts.

Denise Diane Martell, Idaho Falls ID, Idaho Falls 91, Early Childhood through Young Adulthood/Exceptional Needs Specialist.

Kristine Martin, Aberdeen, ID, Aberdeen, Middle Childhood/Generalist.

Terri Meyer, Potlatch, ID, Potlatch School District No. 285, Early Adolescence through Young Adulthood/Career and Technical Education.

Michelle Moore, Pocatello, ID, Pocatello School District 25, Early Childhood/Generalist.

Mary Morrisey, Boise, ID, Boise School District, Early Adolescence/English language Arts.

Jacklyn Mosman, Nezperce, ID, Nezperce Joint School District No. 302, Middle Childhood/Generalist.

Carol Ohrtman, Lewiston, ID, Independent School District No. 1, Adolescence and Young Adulthood/English Language Arts.

Maren Oppelt, Rupert, ID, Minidoka County, Adolescence and Young Adulthood/English Language Arts.

Catherine Pierce, St. Maries, ID, Joint Distr Ct 41, St. Maries, Early Childhood/Generalist.

Susan Pliler, Boise, ID, Independent School District of Boise City, Adolescence and Young Adulthood/English Language Arts.

B. Potter, Potlatch, ID, Potlatch School District #285, Adolescence and Young Adulthood/English Language Arts.

Lani Rembelski, Montpelier, ID, Bear Lake School 33, Early Childhood/Generalist.

Stan Richter, Jerome, ID, Jerome, Adolescence and Young Adulthood/Science.

Vikki Ricks, Rigby, ID, Jefferson 251, Middle Childhood/Generalist.

Douglas Rotz, Grand View, ID, Bruneau Grant View Joint 365, Middle Childhood/Generalist.

Laurie Sadler Rich, Paris, ID, Bear Lake School District 33, Early Childhood through Young Adulthood/Exceptional Needs Specialist.

Patrick Schmidt, Lewiston, ID, Lewiston Independent 1, Early Adolescence through Young Adulthood/Career and Technical Education.

Allan Schneider, Emmett, ID, Emmett School District 221, Adolescence and Young Adulthood/English Language Arts.

Thomas Seifert, Boise, ID, Meridian District, Adolescence and Young Adulthood/Social Studies-History.

Mary Sorger, ID, Boise, Middle Childhood/Generalist.

Julie Stafford, Moscow, ID, Moscow School District 281, Early Adolescence through Young Adulthood/Career and Technical Education.

Lois Standley, Bellevue, ID, Blain County School District No. 61, Early Childhood/Generalist.

Angela Stevens, Inkom, ID, Marsh Valley, Early Childhood/Generalist.

Lorraine Stewart, Shelley, ID, Joint School District No. 60, Adolescence and Young Adulthood/Social Studies-History.

Tammi Taylor Utter, Idaho Falls, ID, Idaho Falls School District 91, Middle Childhood/Generalist.

Portia Toobian-Bailey, Kamiah, ID, Kamiah Joint School District 304, Middle Childhood/Generalist.

Cheryl Tousley, Kooskia, ID, School District 241, Adolescence and Young Adulthood/English Language Arts.

Katherine Uhrig, Twin Falls, ID, Twin Falls, Middle Childhood/Generalist.

April Weber, Troy, ID, Whitepine School District 286, Early Adolescence/Social Studies-History.

Lynn Wessels, Nezperce, ID, Nezperce Joint School District No. 302, Early Childhood/Generalist.

Marlys Westra, Nampa, ID, Vallivue, Early Childhood/Generalist.

Dena Jill Whitesell, Twin Falls, ID, Twin Falls 411, Early Adolescence/English Language Arts.

Donna Wommack, Genesee, ID, Genesee Joint School District No. 282, Early Childhood/Generalist.

Norie Wyatt, Post Falls, ID, Post Falls, Early Childhood/Generalist.

Mary Yamamoto, Caldwell, ID, Caldwell, Middle Childhood/Generalist.

Pamala Young, Decio, ID, Cassia Joint 151, Adolescence and Young Adulthood/Social Studies History.●

THANKING MR. BERNARD MARCUS

● Mr. CLELAND. Mr. President, I would like to offer my thanks and appreciation to Mr. Bernard Marcus for his generous donation of $200 million for the construction of a five-million-gallon aquarium in the city of Atlanta, GA. This gift, made by the Marcus Foundation, is one of the largest single grants ever made by a private foundation and will provide the people of Georgia and those who visit our great State the opportunity to experience the wonders of aquatic and riparian wildlife. In addition to this most recent gesture of generosity, Mr. Marcus has contributed to causes ranging from the Centers for Disease Control and Prevention, vascular diseases, developmentally disabled children, and Jewish charities. Those who have benefitted from his benevolence know him to be a man dedicated to his community and friends. I thank him for his friendship and generosity and look forward to this exciting new addition to the City of Atlanta and the State of Georgia. At this time, I would like to ask that the text of two Atlanta Journal-Constitution articles be printed in the RECORD.

The articles follow:

[From the Atlanta Journal-Constitution, Nov. 20, 2001]

AQUARIUM ''WILL BE A GREAT MARVEL'' HOME DEPOT CHIEF PLEDGES $200 MILLION

(By Shelia M. Poole)

Home Depot Chairman Bernard Marcus promised that the huge Georgia Aquarium announced Monday would have ''no boundaries'' in offering top-notch entertainment and research opportunities for residents and visitors.

''It will be a great marvel,'' said Marcus, whose private Marcus Foundation will spend up to $200 million to build and endow the aquarium, which will be owned by the state.

The nonprofit aquarium—at 5 million gallons and 250,000 square feet—would be among the largest and most elaborate in the nation. It will contain freshwater and saltwater fish and mammals.

Marcus, the 72-year-old cofounder of Home Depot, said the aquarium is a way for him and his wife, Billi, to give back to the community in a way that is ''meaningful and will last past our lifetimes.''

The aquarium, to open in 2005, will be built on 15.5 acres adjacent to Atlantic Station, a planned $2 billion minicity under construction west of the Downtown Connector. When completed, the development will include apartments, condominiums, offices, shops and a 20-screen movie theater.

The site for the aquarium is just north of Atlantic Station, east of Mecaslin Street and south of Deering Road, near the former National Lead Industries site.

The developer of Atlantic Station, Jim Jacoby, who owns Marineland in Florida, is assisting in acquiring the property.

On Monday, representatives of state and local government, business, academia and the tourism and convention industry attended the announcement in the Georgia Capitol's Senate chamber.

Atlanta Mayor-elect Shirley Franklin called it ''a wonderful gift for the city.''

She said the aquarium would not only provide entertainment and education opportunities for residents, but also create a draw for tourists and conventioneers. City boosters have long decried the lack of attractions in downtown Atlanta.

Marcus' announcement effectively supersedes other efforts to build aquariums in Atlanta. At least two proposals had been floated to build aquariums at Stone Mountain Park and near Turner Field.

''We're not in business to compete,'' but to work toward getting quality recreation facilities in the area, said Thomas Dortch, chairman of the Atlanta-Fulton County Recreation Authority, which had tried for years to find financing and a downtown site for an aquarium. ''With the commitment from Mr. Marcus and the governor, we're excited about the fact there will be a world-class aquarium.''

The aquarium is still very much a work in progress, say those associated with it. There are no renderings, site plans or economic impact figures, although attendance is projected to be between 1.5 million and 2.5 million annually.

Don Harrison, a Home Depot spokesman, said Marcus planned to visit aquariums across the United States and elsewhere, including China. The design will be finalized over the next 18 months.

''Now is when all the work begins,'' said Harrison. The aquarium will be global in scope, drawing researchers and visitors from around the world, he said. ''The world is, frankly, our target.''

Former Atlantan Jeffrey Swanagan, executive director and chief executive officer of the Florida Aquarium in Tampa, has been tapped to run the project. Swanagan spent 10 years as deputy director of Zoo Atlanta and was a protege of director Terry Maple.

Marcus first approached Gov. Roy Barnes about the project a year ago. The governor suggested Atlantic Station as a possible site. ''Location was key,'' Marcus said. ''In our minds it will become a destination to visitors.''

Already the city has museums, art galleries and theater. What it doesn't have, Marcus said, is an aquarium.

Dan Graveline—executive director of the Georgia World Congress Center—said, ''It will be a wonderful asset for the city. One of [the city's] biggest shortcomings is that convention[-goers] lack things to do in downtown Atlanta.''

The aquarium represents the largest donation to date from the Marcus Foundation and is a departure from previous endeavors, noted Harrison, the spokesman for Home Depot.

With the private funding, the Georgia aquarium will open with no debt. Other aquariums, typically funded by municipal bonds and saddled with enormous debt, have struggled to prosper. Many have had difficulty funding new exhibits critical to attracting repeat customers.

A notable exception is the Monterey Bay Aquarium in California. The aquarium, which opened in October 1984, was privately financed with a $55 million gift from David and Lucile Packard of the Hewlett-Packard fortune.

There were ''no bonds and no debt,'' said Ken Peterson, a spokesman for the Monterey Bay Aquarium, which attracts 1.8 million visitors annually and was expanded in 1996. ''When you're paying a mortgage plus your operating expenses, it doesn't leave a lot of extra revenue for developing special exhibitions or new exhibit galleries.''

Bob Masterson, president of Orlando-based Ripley Entertainment Inc., which operates aquariums in Myrtle Beach, S.C., and Gatlinburg, Tenn., said the size of the Atlanta Facility will make it expensive to operate.

''We spend about $30,000 a day to run the 1.3 million-gallon aquarium in Myrtle Beach and a little more than that in Gatlinburg,'' he said. ''With a 5 million-gallon tank, I'd guess it would cost at least $50,000 a day to operate. And if it fails, there is nothing else you can do with that building.''

[From the Atlanta Journal-Constitution, Nov. 20, 2001]

AN AQUARIUM FOR ATLANTA: GIANT FACILITY WILL INCREASE KNOWLEDGE ABOUT OCEANS

(By Charles Seabrook)

Call it the Atlanta Ocean.

A world-class aquarium in Atlanta will mean not only a place where people can marvel over ocean wonders, but also a place

where scientists and students can unravel mysteries of the sea.

Understanding the oceans' workings is vital, scientists say, because the declining health of the world's seas has become a pressing public problem.

Dozens of ocean fish species are in peril because of overfishing, and marine biologists estimate that more than 25 percent of the coral reefs in the world's tropical oceans are sick or dying.

''If this aquarium is built the way it's envisioned, it will be wonderful not only for economic development but also for basic science,'' said Mark Hay, professor of environmental biology at Georgia Tech. ''It will be of immense importance for researchers.''

The Georgia Aquarium that Bernard Marcus, chairman of Home Depot, says he wants to build—spending up to $200 million—will hold more than 5 million gallons of water and encompass 250,000 square feet.

''People who may never travel to the coast will be able to come to Atlanta to learn the lessons of the sea,'' Hay said.

For scientists, the size and scope of the aquarium, scheduled for completion in 2005, means they may be able to conduct studies that cannot be done very well in laboratories.

''We can buy little tanks and put little creatures in them and observe them in our labs,'' Hay said.

But a large aquarium, he says, could accommodate complete ecosystems—such as a living coral reef—replete with large numbers of different creatures and plants and minerals.

Scientists say the ocean will never be fully understood until they understand how its ecosystems function.

The Georgia Aquarium will follow the lead of other major aquariums around the world. Scientific research is a basic mission at most of those institutions.

''We realize that health oceans are essential to our survival on Earth,'' says Ken Peterson of the Monterey Bay Aquarium in California.

''As an aquarium, we see our role as raising public awareness of the oceans and conducting research to help resolve the problems the oceans face.''

He notes that half the Earth's oxygen comes from the sea, and the only protein for more than a billion people is provided by the ocean.

''We believe it is important that people know that and know how important the oceans are for their survival,'' he says.

Jeffrey Swanagan, who has been tapped as the executive director of the aquarium, says a theme has not been chosen. ''But it will have a world focus, so that we can tell any freshwater or saltwater story,'' he says.

Swanagan, a Georgia Tech graduate who spent 10 years at Zoo Atlanta, said the ''value of research and conservation is very strong in me.''

Swanagan said he hopes the Georgia Aquarium will make people in Atlanta as familiar with the sea as they are with the Chattahoochee River.

''In Tampa, where I live now, kids take the sea for granted because it's all around them,'' he said. ''They think nothing of driving over a causeway and seeing dolphins jumping out the water. We want the people in Atlanta to have similar experiences, albeit it will be an indoor one.''

Swanagan, executive director of the Florida Aquarium, said he and his staff will be looking closely at aquariums all over the world to study their exhibits, planning and their public appeal.

Universities and other academic institutions in Georgia also are being asked for help in establishing a marine research program.

''We want an aquarium like no other,'' he says.

That means, he adds, that the aquarium might attempt to house sea creatures that have been heretofore difficult for other aquariums to maintain.

Some of those creatures, say marine biologists, include fish, squids and other animals that live deep in the ocean under tremendous pressures—and which have never been seen alive on land.

For Hay and other scientists, the aquarium will be the chance of a lifetime.

Hay helped build the renowned living coral reef aquarium at the Smithsonian Institution 20 years ago.

Many scientists said that facility could not be done because of all the requirements needed to keep the reef animals alive and healthy.

''We did have to learn as we went along,'' he said.

For instance, one scientist argued that a machine was needed to create wave patterns in the aquarium, but others argued that it was unnecessary.

The researchers found, however, that wave action is vital to maintaining a health coral reef system.

''So, designing and building a new aquarium will further our knowledge even more,'' he says.●

DEPARTING NATIONAL INSTITUTE OF MENTAL HEALTH DIRECTOR: DR. STEVEN E. HYMAN

● Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to commend Steven E. Hyman for his distinguished leadership at the National Institute of Mental Health at NIH for the past 5 years. Dr. Hyman will soon be turning his immense talents to his new duties as the Provost at Harvard University, and I wish him well in this new chapter of his outstanding career.

Steven Hyman was remarkably effective in bringing issues to the national agenda that for too long have met with shame and stigma. As a renowned neuroscientist, he used his considerable talent, reputation, and communication skills to demonstrate to the entire Nation the progress that is being made in understanding and healing mental illnesses. He worked closely with the Surgeon General in his efforts to bring this profoundly important message to the attention of the country.

It is because of efforts like these that we are closer than ever before to providing fair treatment for patients and their families, who have suffered from discrimination because mental illness for so long has been treated unfairly. Under Dr. Hyman's leadership, the NIMH has charted a bold course, initiating new clinical trials that will not exclude patients who are coping with difficulties so often associated with mental illness. He has insisted on including members of the public in the Institutes' research planning, including the groups reviewing grant applications. He has increased the Institute's research emphasis on areas of critical need, such as children and the elderly. He has worked skillfully to guarantee that greater effort is made to translate research into practice.

I know that the National Institute of Mental Health will miss Dr. Hyman's bold and brilliant presence, and so will the nation, as he takes up his eminent new position at Harvard I commend him for his outstanding service to this country.●

TRIBUTE TO MAYOR BRUCE TOBEY

● Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to pay tribute to Bruce Tobey, the outstanding Mayor of Gloucester, MA, who is retiring at the end of this year. I join the people of Gloucester in expressing my deep appreciation for his commitment and dedication to the City of Gloucester and I thank him for his leadership and his friendship.

Mayor Tobey has been a strong and effective leader for Gloucester, working to improve opportunities for all of Gloucester's residents. Mayor Tobey took a particular interest in the fishing community. Fishing has been the lifeblood of Gloucester for nearly four hundred years, and Mayor Tobey has worked tirelessly to continue this proud tradition.

Mayor Tobey's leadership was especially significant in opening the Gloucester Fish Exchange. The Fish Exchange has been a major success as a site for fishermen to sell their fish and for buyers to view the fish. It is the second Fish Exchange to be established in the entire country. I commend the Mayor for his foresight and perseverance, which has made Gloucester's Fish Exchange such a resounding success.

Mayor Tobey has also worked skillfully to rehabilitate the State Fish Pier in Gloucester. New businesses on the pier, including the Cape Ann Seafood Center, a 50,000-square-foot seafood-processing center, are there today because of Mayor Tobey's leadership and dedication. New businesses on the pier have been essential in improving access to local seafood processing, and have also created numerous new jobs on the waterfront.

Mayor Tobey has also been a strong supporter of the Gloucester Fisheries Forum, a day-long symposium dedicated to the discussion of major fisheries issues. Year in and year out, this Forum has become a productive opportunity for members of the local fishing community to speak to leaders in the field and learn from them about the current challenges and future hopes for the fishing industry. Mayor Tobey understood the need to bring people together, and he did an outstanding job.

There has been no greater friend or supporter of these fishing communities than Mayor Tobey. We are grateful for his distinguished service to the City of Gloucester and to our state, and we're proud of his friendship. I know that his commitment to public service will continue in other ways, and he will be deeply missed.●

TRIBUTE TO MAYOR GERRY DOYLE OF PITTSFIELD

• Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to pay tribute to Gerry Doyle, the outstanding Mayor of Pittsfield, MA, who is retiring at the end of this year. He has been a wonderful mayor for the people of Pittsfield, and I know they join me in thanking him for his commitment and dedication to public service.

Mayor Doyle will long be remembered for his outstanding leadership in achieving an historic agreement to clean up the Housatonic River and the General Electric industrial site. He was the driving force behind this impressive agreement which protects the magnificent environmental heritage of the Berkshires and the public health of the entire community, and has laid a solid basis for future economic development in Pittsfield.

The settlement is one of the largest of its kind ever achieved in Massachusetts, Mayor Doyle won great progress for all the Berkshires by striking this all-important balance between economic development and environmental cleanup. The day this agreement was reached was the dawning of a new era for Pittsfield, and for that we will always be grateful to Mayor Doyle for his outstanding leadership.

Mayor Doyle has also done an outstanding job of increasing tourism in the Berkshires and in improving the quality of life for the people of Pittsfield. He's worked skillfully to improve transportation in the city, which in turn has helped attract new businesses to Pittsfield.

All of us in Massachusetts are grateful for Mayor Doyle's distinguished service to the City of Pittsfield and to our State, and we are grateful for his friendship. We know that his commitment to public service will continue in other ways, and he will be deeply missed.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE EMERGENCY REGARDING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION—MESSAGE FROM THE PRESIDENT—PM 60

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

As required by section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), I transmit herewith a 6-month periodic report on the national emergency with respect to the proliferation of weapons of mass destruction that was declared in Executive Order 12938 of November 14, 1994.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 4, 2001.*

PERIODIC REPORT ON THE NATIONAL EMERGENCIES WITH RESPECT TO THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) AND KOSOVO—MESSAGE FROM THE PRESIDENT—PM 61

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

As required by section 401(c) of the National emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a combined 6-month periodic report on the national emergencies declared with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) in Executive Order 12808 on May 30, 1992, and Kosovo in Executive Order 13088 on June 9, 1998.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 4, 2001.*

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:17 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 717. An act to amend the Public Health Service Act to provide for research with respect to various forms of muscular dystrophy, including Duchenne, Becker, limb girdle, congenital, facioscapulohumeral, myotonic, oculopharyngeal, distal, and Emery-Dreifuss muscular dystrophies.

H.R. 2291. An act to extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes.

The enrolled bills were signed subsequently by the president pro tempore (Mr. BYRD).

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 1765. A bill to improve the ability of the United States to prepare for and respond to a biological threat or attack.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–4796. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''4- Amino-6-(1, 1-dimethylethyl)-3 -(methylthio)-2, 2, 4-triazin-5(4H)—one (Metribuzin), Dichlobenil, Diphenylamine, Sulprofos, Pendimethalin, and Terbacil; Tolerance Actions'' (FRL6804-4) received on December 3, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4797. A communication from the Acting Assistant General Counsel for Regulatory Services, Office of the Chief Financial Officer, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Direct Grant Programs'' (RIN1890–AA02) received on November 29, 2001; to the Committee on Health, Education, Labor, and Pensions.

EC–4798. A communication from the Secretary of Labor, transmitting, pursuant to law, the Eighth Annual Report relative to Trade and Employment Effects of the Andean Trade Preference Act, November 2001; to the Committee on Finance.

EC–4799. A communication from the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, transmitting, pursuant to law, a report entitled ''Financial Addendum to Fiscal Year Department of Defense Chief Information Officer Annual Information Assurance Report''; to the Committee on Armed Services.

EC–4800. A communication from the Chairman of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, transmitting, pursuant to law, the Advance Executive Summary of the Third Annual Report of the Advisory Panel dated October 31, 2001; to the Committee on Armed Services.

EC–4801. A communication from the Acting Assistant Secretary of Land and Minerals Management, Engineering and Operations Division, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf-Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases'' (RIN1010–AC68) received on November 29, 2001; to the Committee on Energy and Natural Resources.

EC–4802. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Utah Regulatory Program'' (UT–037–FOR) received on November 29, 2001; to the Committee on Energy and Natural Resources.

EC–4803. A communication from the Assistant General Counsel for Regulatory Law, Office of Energy Efficiency and Renewable Energy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Weatherization Assistance Program for Low-Income Persons'' (RIN1901–AB05) received on December 3, 2001; to the Committee on Energy and Natural Resources.

EC–4804. A communication from the Secretary of Labor, transmitting , pursuant to law, the Semiannual Report of the Office of the Inspector General for the period April 1,

2001, through September 30, 2001; to the Committee on Governmental Affairs.

EC–4805. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–177, ''Parking Meter Fee Moratorium Temporary Act of 2001''; to the Committee on Governmental Affairs.

EC–4806. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–174, ''Chief Financial Officer Establishment Reprogramming During Non-Control Years Technical Temporary Amendment Act of 2001''; to the Committee on Governmental Affairs.

EC–4807. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–173, ''Sentencing Reform Technical Amendment Temporary Act of 2001''; to the Committee on Governmental Affairs.

EC–4808. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–170, ''Closing of a Portion of F Street, N.W., S.O. 99–70, Act of 2001''; to the Committee on Governmental Affairs.

EC–4809. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–172, ''Redevelopment Land Agency-RLA Revitalization Corporation Transfer Temporary Act of 2001''; to the Committee on Governmental Affairs.

EC–4810. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-169, ''Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2001''; to the Committee on Governmental Affairs.

EC–4811. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–184, ''Disposal of District Owned Surplus Real Property Temporary Amendment Act of 2001''; to the Committee on Governmental Affairs.

EC–4812. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–183, ''Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Temporary Act of 2001''; to the Committee on Governmental Affairs.

EC–4813. A communication from the Chairman of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14–182, ''Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Amendment Act of 2001''; to the Committee on Governmental Affairs.

EC–4814. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Full Approval of the Operating Permits Program; for the Pinal County Air Quality Control District, Arizona'' (FRL7112–8) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4815. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department'' (FRL7105–3) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4816. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Minnesota; Final Approval of State Underground Storage Tank Program'' (FRL7110–8) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4817. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Final Approval of Operating Permits Program; State of Vermont'' (FRL7110–2) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4818. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Implementation Plans; Illinois'' (FRL7111–1) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4819. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans, State of Missouri'' (FRL7110–5) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4820. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Illinois'' (FRL7107–9) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4821. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Illinois'' (FRL7108–8) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4822. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of the Implementation Plans; Illinois'' (FRL7107–7) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4823. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Final Full Approval of Operating Permit Program; Michigan'' (FRL7111–6) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4824. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Final Full Approval of 40 CFR Part 70 Operating Permits Program; Minnesota'' (FRL7111–7) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4825. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Final Full Approval of Operation Permit Program; Wisconsin'' (FRL7111–8) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4826. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Proposed Full Approval of 40 CFR Part 70 Operating Permits Program; Indiana'' (FRL7111–9) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4827. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Proposed Full Approval of 40 CFR Part 70 Operating Permits Program; Illinois'' (FRL7112–1) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4828. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Full Approval of Operating Permits Program; State of Hawaii'' (FRL7111–5) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4829. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Full Approval of Operating Permit Program; District of Columbia'' (FRL7112–3) received on November 29, 2001; to the Committee on Environment and Public Works.

EC–4830. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Full Approval of Operating Permit Program; Virginia'' (FRL7112–5) received on November 29, 2001; to the Committee on Environment and Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany S. 1233, a bill to provide penalties for certain unauthorized writing with respect to consumer products. (Rept. No. 107–106).

By Mr. INOUYE, from the Committee on Appropriations, with an amendment in the nature of a substitute:

H.R. 3338: A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. THOMAS (for himself and Mrs. LINCOLN):

S. 1760. A bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the medicare program. and for other purposes; to the Committee on Finance.

By Mr. DORGAN (for himself, Mr. CAMPBELL, and Mr. BINGAMAN):

S. 1761. A bill to amend title XVIII of the Social Security Act to provide for coverage of cholesterol and blood lipid screening under the medicare program; to the Committee on Finance.

By Mr. JOHNSON:

S. 1762. A bill to amend the Higher Education Act of 1965 to establish fixed interest rates for student and parent borrowers, to

extend current law with respect to special allowances for lenders, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1763. A bill to promote rural safety and improve rural law enforcement; to the Committee on Finance.

By Mr. LIEBERMAN:

S. 1764. A bill to provide incentives to increase research by commercial, for-profit entities to develop vaccines, microbicides, diagnostic technologies, and other drugs to prevent and treat illnesses associated with a biological or chemical weapons attack; to the Committee on Finance.

By Mr. FRIST (for himself, Mr. KENNEDY, Mr. ALLEN, Mr. DASCHLE, Mr. BENNETT, Mr. AKAKA, Mr. BOND, Mr. BAUCUS, Mr. BROWNBACK, Mr. BAYH, Mr. BURNS, Mr. BIDEN, Mr. CAMPBELL, Mr. BINGAMAN, Mr. CHAFEE, Mr. BREAUX, Mr. COCHRAN, Mrs. CARNAHAN, Ms. COLLINS, Mr. CLELAND, Mr. CRAIG, Mrs. CLINTON, Mr. CRAPO, Mr. CORZINE, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. GRASSLEY, Mr. DURBIN, Mr. HAGEL, Mr. EDWARDS, Mr. HUTCHINSON, Mrs. FEINSTEIN, Mrs. HUTCHISON, Mr. HARKIN, Mr. LUGAR, Mr. JEFFORDS, Mr. MCCONNELL, Mr. JOHNSON, Mr. MURKOWSKI, Mr. KERRY, Mr. ROBERTS, Ms. LANDRIEU, Mr. SANTORUM, Mr. LEAHY, Ms. SNOWE, Mr. LIEBERMAN, Mr. SPECTER, Mrs. LINCOLN, Mr. STEVENS, Ms. MIKULSKI, Mr. THOMAS, Mr. MILLER, Mr. THOMPSON, Mrs. MURRAY, Mr. THURMOND, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. REED, Mr. WARNER, Mr. REID, Mr. ROCKEFELLER, Mr. SARBANES, Mr. TORRICELLI, Mr. WELLSTONE, Mr. SCHUMER, Mr. DAYTON, Mr. HELMS, Mr. FITZGERALD, Mr. CONRAD, Mr. HATCH, and Ms. STABENOW):

S. 1765. A bill to improve the ability of the United States to prepare for and respond to a biological threat or attack; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DASCHLE:

S. Res. 186. A resolution to authorize representation of Senator Lott in the case of Lee v. Lott; considered and agreed to.

ADDITIONAL COSPONSORS

S. 690

At the request of Mr. WELLSTONE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 690, a bill to amend title XVIII of the Social Security Act to expand and improve coverage of mental health services under the medicare program.

S. 724

At the request of Mr. BOND, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 724, a bill to amend title XXI of the Social Security Act to provide for coverage of pregnancy-related assistance for targeted low-income pregnant women.

S. 990

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 990, a bill to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1008

At the request of Mr. BYRD, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1008, a bill to amend the Energy Policy Act of 1992 to develop the United States Climate Change Response Strategy with the goal of stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, while minimizing adverse short-term and long-term economic and social impacts, aligning the Strategy with United States energy policy, and promoting a sound national environmental policy, to establish a research and development program that focuses on bold technological breakthroughs that make significant progress toward the goal of stabilization of greenhouse gas concentrations, to establish the National Office of Climate Change Response within the Executive Office of the President, and for other purposes.

S. 1209

At the request of Mr. BINGAMAN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1209, a bill to amend the Trade Act of 1974 to consolidate and improve the trade adjustment assistance programs, to provide community-based economic development assistance for trade-affected communities, and for other purposes.

S. 1248

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 1248, a bill to establish a National Housing Trust Fund in the Treasury of the United States to provide for the development of decent, safe, and affordable, housing for low-income families, and for other purposes.

S. 1312

At the request of Mr. NELSON of Florida, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1312, a bill to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach, Florida, for possible inclusion in the National Park System.

S. 1373

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 1373, a bill to protect the right to life of each born and preborn human person in existence at fertilization.

S. 1478

At the request of Mr. SANTORUM, the names of the Senator from Nevada (Mr. ENSIGN) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1478, a bill to amend the Animal Welfare Act to improve the treatment of certain animals, and for other purposes.

S. 1609

At the request of Mr. KERRY, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1609, a bill to amend the National Trails System Act to direct the Secretary of the Interior to conduct a study on the feasibility of designating the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut as a national historic trail.

S. 1618

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1618, a bill to enhance the border security of the United States, and for other purposes.

S. 1678

At the request of Mr. MCCAIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1678, a bill to amend the Internal Revenue Code of 1986 to provide that a member of the uniformed services or the Foreign Service shall be treated as using a principal residence while away from home on qualified official extended duty in determining the exclusion of gain from the sale of such residence.

S. 1707

At the request of Mr. JEFFORDS, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1738

At the request of Mr. KERRY, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 1738, a bill to amend title XVIII of the Social Security Act to provide regulatory relief, appeals process reforms, contracting flexibility, and education improvements under the medicare program, and for other purposes.

S. 1745

At the request of Mrs. LINCOLN, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mrs. MURRAY), the Senator from Georgia (Mr. CLELAND), the Senator from New Jersey (Mr. TORRICELLI), and the Senator from New York (Mr . SCHUMER) were added as cosponsors of S. 1745, a bill to delay until

at least January 1, 2003, any changes in medicaid regulations that modify the medicaid upper payment limit for non-State Government-owned or operated hospitals.

S. 1749

At the request of Mr. KENNEDY, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from New York (Mr. SCHUMER), the Senator from Nebraska (Mr. HAGEL), and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 1749 , a bill to enhance the border security of the United States, and for other purposes.

S. 1757

At the request of Mr. CRAIG, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1757, a bill to authorize an additional permanent judgeship in the district of Idaho, and for other purposes.

S.J. RES. 12

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S.J. Res. 12, a joint resolution granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding.

AMENDMENT NO. 2152

At the request of Mr. DEWINE, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of amendment No. 2152 intended to be proposed to H.R. 3090, a bill to provide tax incentives for economic recovery.

AMENDMENT NO. 2157

At the request of Mr. MCCAIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of amendment No. 2157 intended to be proposed to H.R. 3090, a bill to provide tax incentives for economic recovery.

AMENDMENT NO. 2202

At the request of Mr. CONRAD, his name was added as a cosponsor of amendment No. 2202.

STATEMENTS ON INTRODUCED BILLS AND JOINTS RESOLUTIONS

By Mr. THOMAS (for himself and Mrs. LINCOLN):

S. 1760. A bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare Program, and for other purposes; to the Committee on Finance.

Mr. THOMAS. Mr. President, I am pleased to rise today to introduce the Seniors Mental Health Access Improvement Act of 2001 with my distinguished colleague from Arkansas, Mrs. LINCOLN. Specifically, the Seniors Mental Health Access Improvement Act of 2001 permits mental health counselors and marriage and family therapists to bill Medicare for their services. This will result in an increased choice of providers for seniors and enhance their ability to access mental health services in their communities.

This legislation is especially crucial to rural seniors who are often forced to travel long distances to utilize the services of mental health providers currently recognized by the Medicare program. Rural communities have difficulty recruiting and retaining providers, especially mental health providers. In many small towns a mental health counselor or a marriage and family therapist is the only mental health care provider in the area. Medicare law, as it exists today, compounds the situation because only psychiatrists, clinical psychologists, clinical social workers and clinical nurse specialists are able to bill Medicare for their services.

It is time the Medicare program recognized the qualifications of mental health counselors and marriage and family therapists as well as the critical role they play in the mental health care infrastructure. These providers go through rigorous training, similar to the curriculum of masters level social workers, and yet are excluded from the Medicare program.

Particularly troubling to me is the fact that seniors have disproportionally higher rates of depression and suicide than other populations. Additionally, 75 percent of the 518 nationally designated Mental Health Professional Shortage Areas are located in rural areas and one-fifth of all rural counties have no mental health services of any kind. Frontier counties have even more drastic numbers as 95 percent do not have a psychiatrist, 68 percent do not have a psychologist and 78 percent do not have a social worker. It is quite obvious we have an enormous task ahead of us to reduce these staggering statistics. Providing mental health counselors and marriage and family therapists the ability to bill Medicare for their services is a key part of the solution.

Virtually all of my State of Wyoming is a mental health professional shortage area and will greatly benefit from this legislation. Wyoming has 169 psychologists, 121 psychiatrists, and 247 social workers for a total of 537 Medicare eligible mental health providers. Enactment of the Seniors Mental Health Access Improvement Act of 2001 will double the number of mental health providers available to seniors in my State with the addition of 517 mental health counselors and 55 marriage and family therapists currently licensed in the State.

In crafting this legislation Senator LINCOLN and I worked with numerous outside organizations with an interest in this issue. As a result of this collaboration, the ''Seniors Mental Health Access Improvement Act of 2001'' is strongly supported by the American Counseling Association, the Wyoming Counseling Association, the American Mental Health Counselors Association, the Arkansas Mental Health Counselors Association, the American Association for Marriage and Family Therapy, the Wyoming and Arkansas Chapters of the Association for Marriage and Family Therapy, the California Association of Marriage and Family Therapists, and the National Rural Health Association.

I believe this legislation is critically important to the health and well-being of our Nation's Seniors and I strongly urge all my colleagues to become a cosponsor.

Mr. President, I ask unanimous consent that the text of the bill and letters of endorsement from supporting organizations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Seniors Mental Health Access Improvement Act of 2001''.

SEC. 2. COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES UNDER PART B OF THE MEDICARE PROGRAM.

(a) COVERAGE OF SERVICES.—

(1) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by sections 102(a) and 105(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–468 and 2763A–471), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended—

(A) in subparagraph (U), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (V)(iii), by inserting ''and'' after the semicolon at the end; and

(C) by adding at the end the following new subparagraph:

''(W) marriage and family therapist services (as defined in subsection (ww)(1)) and mental health counselor services (as defined in subsection (ww)(3));''.

(2) DEFINITIONS.—Section 1861 of such Act (42 U.S.C. 1395x), as amended by sections 102(b) and 105(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–468 and 2763A–471), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by adding at the end the following new subsection:

''Marriage and Family Therapist Services; Marriage and Family Therapist; Mental Health Counselor Services; Mental Health Counselor

''(ww)(1) The term 'marriage and family therapist services' means services performed by a marriage and family therapist (as defined in paragraph (2)) for the diagnosis and treatment of mental illnesses, which the marriage and family therapist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

''(2) The term 'marriage and family therapist' means an individual who—

''(A) possesses a master's or doctoral degree which qualifies for licensure or certification as a marriage and family therapist pursuant to State law;

''(B) after obtaining such degree has performed at least 2 years of clinical supervised experience in marriage and family therapy; and

''(C) in the case of an individual performing services in a State that provides for licensure or certification of marriage and family therapists, is licensed or certified as a marriage and family therapist in such State.

''(3) The term 'mental health counselor services' means services performed by a mental health counselor (as defined in paragraph (2)) for the diagnosis and treatment of mental illnesses which the mental health counselor is legally authorized to perform under State law (or the State regulatory mechanism provided by the State law) of the State in which such services are performed, as would otherwise be covered if furnished by a physician or as incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

''(4) The term 'mental health counselor' means an individual who—

''(A) possesses a master's or doctor's degree in mental health counseling or a related field;

''(B) after obtaining such a degree has performed at least 2 years of supervised mental health counselor practice; and

''(C) in the case of an individual performing services in a State that provides for licensure or certification of mental health counselors or professional counselors, is licensed or certified as a mental health counselor or professional counselor in such State.''.

(3) PROVISION FOR PAYMENT UNDER PART B.—Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended by adding at the end the following new clause:

''(v) marriage and family therapist services and mental health counselor services;''.

(4) AMOUNT OF PAYMENT.—Section 1833(a)(1) of such Act (42 U.S.C. 1395*l*(a)(1)), as amended by sections 105(c) and 223(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–472 and 2763A–489), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended—

(A) by striking ''and (U)'' and inserting ''(U)''; and

(B) by inserting before the semicolon at the end the following: '', and (V) with respect to marriage and family therapist services and mental health counselor services under section 1861(s)(2)(W), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or 75 percent of the amount determined for payment of a psychologist under clause (L)''.

(5) EXCLUSION OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES FROM SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.—Section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) is amended—

(A) in paragraph (2)(A)(i)(II), by striking ''clauses (ii) and (iii)'' and inserting ''clauses (ii) through (iv)''; and

(B) by adding at the end of paragraph (2)(A) the following new clause:

''(iv) EXCLUSION OF CERTAIN MENTAL HEALTH SERVICES.—Services described in this clause are marriage and family therapist services (as defined in section 1861(ww)(1)) and mental health counselor services (as defined in section 1861(ww)(3)).''.

(6) INCLUSION OF MARRIAGE AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS AS PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section 1842(b)(18)(C) of such Act (42 U.S.C. 1395u(b)(18)(C)), as amended by section 105(d) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–472), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by adding at the end the following new clauses:

''(vii) A marriage and family therapist (as defined in section 1861(ww)(2)).

''(viii) A mental health counselor (as defined in section 1861(ww)(4)).''.

(b) COVERAGE OF CERTAIN MENTAL HEALTH SERVICES PROVIDED IN CERTAIN SETTINGS.—

(1) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by inserting '', by a marriage and family therapist (as defined in subsection (ww)(2)), by a mental health counselor (as defined in subsection (ww)(4)),'' after ''by a clinical psychologist (as defined by the Secretary)''.

(2) HOSPICE PROGRAMS.—Section 1861(dd)(2)(B)(i)(III) of such Act (42 U.S.C. 1395x(dd)(2)(B)(i)(III)) is amended by inserting ''or a marriage and family therapist (as defined in subsection (ww)(2))'' after ''social worker''.

(c) AUTHORIZATION OF MARRIAGE AND FAMILY THERAPISTS TO DEVELOP DISCHARGE PLANS FOR POST-HOSPITAL SERVICES.—Section 1861(ee)(2)(G) of the Social Security Act (42 U.S.C. 1395x(ee)(2)(G)) is amended by inserting ''marriage and family therapist (as defined in subsection (ww)(2)),'' after ''social worker,''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 2002.

AMERICAN COUNSELING ASSOCIATION,
Alexandria, VA, November 27, 2001.

Hon. CRAIG THOMAS,
U.S. Senate,
Washington, DC.

DEAR SENATOR THOMAS: I am writing on behalf of the American Counseling Association, which with over 53,000 members is the nation's largest non-profit membership organization representing state-licensed professional mental health counselors, to express our strong support for your legislation, the ''Seniors Mental Health Access Improvement Act of 2001''. We applaud your leadership in introducing this legislation.

Medicare's mental health benefit currently excludes two core mental health professions: licensed professional counselors and licensed marriage and family therapists. Statistics such as those included in the attached fact sheet show that Medicare beneficiaries are not getting the mental health treatment they need. Lack of access to providers is one of the primary factors involved.

As with other areas of health care, accessing mental health services is especially problematic in rural areas. In many underserved communities, licensed professional counselors are the only mental health specialists available. We feel strongly that proposals to improve rural Medicare beneficiaries' access to mental health care must include expanding the pool of covered providers. However, access to providers is not only a rural issue. An article cited on the enclosed fact sheet, recently published by the American Psychiatric Association, states that ''the supply of both specialists and resources cannot meet current or future demands'' for mental health treatment of older Americans.

Coverage of licensed professional counselors under Medicare is a common-sense step toward ensuring that all beneficiaries get the help they need. There are over 81,000 professional counselors licensed as master's level mental health professionals in Wyoming and 44 other states across the country. These providers meet education, training, and examination requirements on par with those of clinical social workers, who have been covered under Medicare for over ten years.

Thank you for your leadership in introducing this important legislation. We look forward to working with you to gain its enactment, and I urge you and your staff to call on us if we can be of any assistance.

Sincerely,

JANE GOODMAN,
President.

AMERICAN COUNSELING ASSOCIATION,
Alexandria, VA, November 27, 2001.

Hon. BLANCHE L. LINCOLN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LINCOLN: I am writing on behalf of the American Counseling Association, which with over 53,000 members is the nation's largest non-profit membership organization representing state-licensed professional mental health counselors, to express our strong support for your legislation, the ''Seniors Mental Health Access Improvement Act of 2001''. We applaud your leadership in introducing this legislation.

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Thank you for your leadership in introducing this important legislation. We look forward to working with you to gain its enactment, and I urge you and your staff to call on us if we can be of any assistance.

Sincerely,

JANE GOODMAN,
President.

WYOMING COUNSELING ASSOCIATION,
November 27, 2001.

Hon. CRAIG THOMAS,
U.S. Senate,
Washington, DC

DEAR SENATOR THOMAS: The Wyoming Counseling Association is pleased to convey its strong support of your legislation, the ''Seniors Mental Health Access Improvement Act of 2001''. We are proud of your leadership on mental health issues, as evidenced by your introduction of this and other legislation, and your support of S. 543, the ''Mental Health Equitable Treatment Act of 2001''.

Wyoming's residents often have only limited—if any—access to mental health professionals. There simply aren't enough providers. Given this fact, it makes no sense to continue to exclude licensed professional counselors from Medicare coverage, when similarly-trained providers are covered. In many parts of the state, licensed professional counselors are the only mental health specialists around.

We believe that establishing Medicare coverage of licensed professional counselors is a cost-effective means of improving the health and well-being of enrollees. The more than 500 professional counselors licensed in Wyoming should be allowed to help meet their mental health needs. It should jolt Congress into action to know that older Americans are the demographic group in the U.S. most at risk of committing suicide. This must be remedied.

Please let us know if there is anything we can do to assist you on mental health issues, and thank you again for your leadership, initiative, and hard work.

Sincerely,

KAREN ROBERTSON,
President.
DR. DAVID L. BECK,
Past-President.
LESLEY TRAVERS,
President-elect.

AMERICAN MENTAL HEALTH COUNSELORS ASSOCIATION,
Alexandria, VA, November 27, 2001.

Hon. CRAIG THOMAS,
U.S. Senate, Hart Senate Office Building, Washington, DC

DEAR SENATOR THOMAS: I am writing on behalf of the American Mental Health Counselors Association (AMHCA) to express our strong support for the Seniors Mental Health Access Improvement Act, legislation to expand access to mental health providers in the Medicare program. As president of AMHCA and a Licensed Mental Health Counselor (LMHC), I commend you and Senator Lincoln for introducing this important legislation.

AMHCA is the nation's largest professional organization exclusively representing the mental health counseling profession. Our members practice in a variety of settings, including hospitals, community mental health centers, managed behavioral health care organizations, employee assistance plans, substance abuse treatment centers, and private practice. Currently, there are more than 80,000 licensed or certified professional counselors practicing in the United States, including many in rural areas where access to mental health care is often scarce.

As you know, Medicare covers the services of independently practicing psychiatrists, clinical psychologists, clinical social workers, and clinical nurse specialists, but does not recognize mental health counselors or marriage and family therapists as separately reimbursable mental health providers. Specifically, the Seniors Mental Health Access Improvement Act would correct this inequity by including mental health counselors and marriage and family therapists among the list of providers who can deliver mental health services to Medicare beneficiaries, provided they are legally authorized to deliver such care under state law. Enactment of this provision would increase access to and the availability of mental health services to Medicare beneficiaries, particularly for those seniors who reside in rural and underserved areas. The inclusion of mental health counselors and marriage and family therapists as Medicare providers would also afford beneficiaries greater choice among qualified providers.

Again, thank you for the leadership you have shown in introducing this legislation and for your commitment to ensuring greater access for seniors affected by mental illness. If I can be of assistance to you as you work towards the enactment of the Seniors Mental Health Access Improvement Act, please feel free to contact me. Beth Powell, AMHCA's Director of Public Policy and Professional Issues, is also available to assist you and your staff.

Sincerely,

MIDGE WILLIAMS,
President.

AMERICAN MENTAL HEALTH COUNSELORS ASSOCIATION,
Alexandria, VA, November 28, 2001

Hon. BLANCHE L. LINCOLN,
U.S. Senate, Dirksen Senate Office Building, Washington, DC

DEAR SENATOR LINCOLN: I am writing on behalf of the American Mental Health Counselors Association (AMHCA) to express our strong support of the Seniors Mental Health Access Improvement Act, legislation to expand access to mental health providers in the Medicare program. As president of AMHCA and a Licensed Mental Health Counselor (LMHC), I commend you and Senator Thomas for introducing this important legislation.

AMHCA is the nation's largest professional organization exclusively representing the mental health counseling profession. Our members practice in a variety of settings, including hospitals, community mental health centers, managed behavioral health care organizations, employee assistance plans, substance abuse treatment centers, and private practice. Currently, there are more than 80,000 licensed or certified professional counselors practicing in the United States, including many in rural areas where access to mental health care is often scarce. The Arkansas Mental Health Counselors Association (ArMHCA), a state chapter of AMHCA, represents the interests of mental health counselors practicing in your state.

As you know, Medicare covers the services of independently practicing psychiatrists, clinical psychologists, clinical social workers, and clinical nurse specialists, but does not recognize mental health counselors or marriage and family therapists as separately reimbursable mental health providers. Specifically, the Seniors Mental Health Access Improvement Act would correct this inequity by including mental health counselors and marriage and family therapists among the list of providers who can deliver mental health services to Medicare beneficiaries, provided they are legally authorized to deliver such care under state law. Enactment of this provision would increase access to and the availability of mental health services to Medicare beneficiaries, particularly for those seniors who reside in rural and underserved areas. The inclusion of mental health counselors and marriage and family therapists as Medicare providers would also afford beneficiaries greater choice among qualified providers.

Again, thank you for the leadership you have shown in introducing this legislation and for your commitment to ensuring greater access for seniors affected by mental illness. If I can be of assistance to you as you work towards the enactment of the Seniors Mental Health Access Improvement Act, please feel free to contact me. Beth Powell, AMHCA's Director of Public Policy and Professional Issues, is also available to assist you and your staff.

Sincerely,

MIDGE WILLIAMS,
President.

ARKANSAS MENTAL HEALTH COUNSELORS ASSOCIATION,
Jonesboro, AR, November 27, 2001.

Hon. BLANCHE L. LINCOLN,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LINCOLN: I am writing on behalf of the Arkansas Mental Health Counselors Association (ArMHCA) to express our strong support for the Seniors Mental Health Access Improvement Act and to convey our sincere appreciation to you for introducing this legislation. As a Licensed Professional Counselor (LPC) and a constituent, I want to express to you the importance of this legislation to LPCs in our state and to the nation's 39 million Medicare beneficiaries.

Mental health counselors-called Licensed Professional Counselor in Arkansas are mental health professionals with a master's or doctoral degree in counseling or related disciplines who provide services along a continuum of care. Currently, 45 states and the District of Columbia license or certify mental health counselors to independently provide mental health services, including the diagnosis and treatment of mental and emotional disorders. LPCs practice in a variety of settings, including hospitals, community mental health centers, managed behavioral health care organizations, employee assistance plans, substance abuse treatment centers, and private practice.

Medicare currently covers the services of independently practicing psychiatrists, clinical psychologists, clinical social workers, and clinical nurse specialists, however; it does not recognize mental health counselors or marriage and family therapists as separately reimbursable mental health providers. The Seniors Mental Health Access Improvement Act corrects this oversight by including mental Health counselors and marriage and family therapist among the list of providers who deliver mental health services to Medicare beneficiaries, provided they are legally authorized to perform the services under state law. Enactment of this provision would increase access to and the availability of mental health services to Medicare beneficiaries, particularly for those seniors who reside in rural and underserved area. The inclusion of mental health counselors and marriage and family therapists in the program would also afford beneficiaries a choice among qualified providers.

Again, thank you for the leadership you have shown in introducing this important legislation. If I can be of assistance to you as your work towards enactment of the Seniors Mental Health Improvement Access Act please feel free to contact me. Beth Powell, AMHCA's Director of Public and Professional Issues, is also available to assist you and your staff.

Sincerely,

DEE KERNODLE
President.

AMERICAN ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY,
Washington, DC, December 3, 2001.

Hon. CRAIG THOMAS,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR THOMAS: The American Association for Marriage and Family Therapy is writing on behalf of the 46,000 marriage and family therapists throughout the United States to commend you for sponsoring the Seniors Mental Health Access Improvement Act of 2001. This crucial legislation to expand the mental health benefits for our elderly will go a long way towards improving Medicare beneficiaries' access to critical mental health services provided by Marriage and Family Therapist (MFTs) and Mental Health Counselors (MHCs) across the nation.

As you know, mental illness is a major problem for many Americans, and particularly for the elderly. Research demonstrates that depression is disproportionately high among older persons, as is the incidence of suicide. The Surgeon General's Report on Mental Health has indicated that there are effective treatments for these and other mental illnesses. The Seniors Mental Health Access Improvement Act of 2001 helps make these treatments accessible to elderly citizens. By expanding the pool of qualified providers, the bill also achieves the important objective of increasing access to mental health services for elderly in rural areas, where there is a recognized shortage of professionals.

Passage of the Seniors Mental Health Access Improvement Act of 2001 will ensure that Medicare beneficiaries in need of mental health services will have the same freedom to choose a mental health professional available in their community as the non-Medicare population. The Archives of General Psychiatry projects that the number of people over 65 years with psychiatric disorders will increase from about 4 million in 1970 to 15 million in 2030. It also indicates that the current health care system is unprepared to meet the upcoming crisis in geriatric mental health. Providing access to licensed MFTs and MHCs will help ensure that there are an adequate number of providers available to meet the needs of the growing elderly population.

Your leadership and support to address the mental health needs of our seniors is greatly appreciated. It is about time the Medicare program is structured to respond to the demands of the elderly population it serves. AAMFT hopes the Seniors Mental Health Improvement Act of 2001 will become law. We look forward to working with you to meet this objective. Thank you again for your commitment to improving the lives of the elderly.

Sincerely,

DAVID M. BERGMAN,
Director of
Legal and Government Affairs.

AMERICAN ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY,
Washington, DC, December 3, 2001.

Hon. BLANCHE LAMBERT LINCOLN,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR LINCOLN: The American Association for Marriage and Family Therapy is writing on behalf of the 46,000 marriage and family therapists throughout the United States to commend you for sponsoring the Seniors Mental Health Access Improvement Act of 2001. This crucial legislation to expand the mental health benefits for our elderly will go a long way towards improving Medicare beneficiaries' access to critical mental health services provided by Marriage and Family Therapist (MFTs) and Mental health Counselors (MHCs) across the nation.

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Sincerely,

DAVID M. BERGMAN,
Director of
Legal and Government Affairs.

WYOMING ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY,
Jackson, WY, November 30, 2001.

Hon. CRAIG THOMAS,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR THOMAS: On behalf of the Wyoming Association for Marriage and Family Therapy, I want to thank you for agreeing to sponsor the Seniors Mental Health Improvement Act of 2001.

This important legislation will go a long way toward improving Medicare beneficiaries' access to critical mental health services in our state. As you know, more than 90 percent of Wyoming has been designated by the federal government as a mental health professional shortage area. By authorizing Medicare coverage for both Marriage and Family Therapists (MFTs) and Mental Health Counselors (MHCs), you are more than doubling the number of mental health professionals available to provide services to the Medicare population in these underserved areas.

Your legislation will also ensure that Wyoming beneficiaries in need of mental health services will have the same freedom to choose the mental health professional available in their community as the non-Medicare population. As you are aware, our state has already authorized MFTs to provide a wide range of mental health services covered by the Medicare program. Unfortunately, because Medicare does not currently recognize MFTs, Medicare beneficiaries must often travel hundreds of miles to be seen by a mental health professional who is recognized by the Medicare program. This, despite the fact that there may be a Marriage and Family Therapist in their community that the state has already deemed qualified to provide the covered services.

Your support for improved access to mental health services is greatly appreciated. We look forward to working with you on this important legislation. I would also personally like to send my best wishes to you and Susan and hope that all is well in Washington.

Sincerely,

CINDY KNIGHT
President.

ARKANSAS ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY,
December 1, 2001.

Hon. BLANCHE LAMBERT LINCOLN,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR LINCOLN: I was part of a coalition of four mental health organizations that wrote to you last week on behalf of the Seniors Mental Health Improvement Act of 2001. However, I wanted to address that again with you specifically from the Arkansas Association for Marriage and Family Therapy. This is such an important piece of legislation on behalf of our aging population.

This important legislation will go a long way towards improving Medicare beneficiaries' access to critical mental health services in our state. As you know, more than 90 percent of Arkansas has been designated by the federal government as a mental health professional shortage area. By authorizing Medicare coverage for both Marriage and Family Therapists (MFTs) and Licensed Professional Counselors (LPCs) or Mental Health counselors (MHCs) you are more than doubling the number of mental health professionals available to provide services to the Medicare population in these under-served regions.

Your legislation will also ensure that Arkansas Medicare beneficiaries in need of mental health services will have the same freedom to choose the mental health professional available in their community as the non-Medicare population. As you are aware, our state has already authorized MFTs to provide a wide range of mental health services covered by the Medicare program. Unfortunately, because Medicare does not currently recognize MFTs, Medicare beneficiaries must often travel hundreds of miles to be seen by a mental health professional that is recognized by Medicare. In my practice, I am aware of long waits for seniors to see providers due to the few and the overload of those providers. This, despite the fact that there may be a Marriage and Family Therapist in their community that the state has already deemed qualified to provide the covered services.

Your support for improved access to mental health services is greatly appreciated. We look forward to working with you on this important legislation.

Sincerely,

DELL TYSON,
President.

NATIONAL RURAL HEALTH ASSOCIATION,
Kansas City, MO, December 3, 2001.

Hon. CRAIG THOMAS,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR THOMAS: On behalf of the National Rural Health Association, I would like to convey our strong support for the Seniors Mental Health Access Improvement Act of 2001.

While a lack of primary care services in rural and frontier areas has long been acknowledged, the scarcity of rural mental health services has only recently received increased attention. At the end of 1997, 76% of designated mental health professional shortage areas were located in non-metropolitan areas with a total population of over 30 million Americans. Currently there is an increased need for intervention by mental health care professionals to help people cope with the aftermath of the September 11 terrorist attacks as well as the ongoing war on terrorism. Because there is less access to mental health care in rural America, rural residents will have a subsequent lack of professional guidance in dealing with the recent trauma experienced by our country.

The Seniors Mental Health Access Improvement Act of 2001 would help provide increased access to mental health car services in rural and frontier areas by allowing Licensed Professional Counselors and Marriage and Family Therapists to bill Medicare for their services and be paid 80 percent of the lesser of the actual charge for the services or 75 percent of the amount determined for payment of a psychologist.

The membership of the NRHA appreciates your bringing attention to the critical issue of access to mental health care in rural areas as well as your ongoing leadership on rural health issues. The NRHA stands ready to work with you on enactment of the Seniors Mental Health Access Improvement Act of 2001, which would help to increase the availability of mental health care in rural and frontier areas.

Sincerely,

CHARLOTTE HARDT,
President.

NATIONAL RURAL HEALTH ASSOCIATION,
Kansas City, MO, December 3, 2001.

Hon. BLANCHE LINCOLN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

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Sincerely,

CHARLOTTE HARDT,
President.

CALIFORNIA ASSOCIATION OF
MARRIAGE AND FAMILY THERAPISTS,
San Diego, CA, November 19, 2001.

Re Medicare Legislation to Recognize Marriage and Family Therapists and Professional Counselors.

Hon. CRAIG THOMAS,
U.S. Senate,
Washington, DC.

DEAR SENATOR THOMAS: We are writing to you in recognition and support of your willingness to cosponsor legislation that would dramatically improve access to mental health services for Medicare beneficiaries. By adding licensed marriage and family therapists and licensed professional counselors, it will open many opportunities within Medicare for patients to locate and receive therapy from appropriately trained and qualified professionals.

On behalf of the 24,500 members of the California Association of Marriage and Family Therapists, we support your willingness to co-sponsor this legislation. Under California law, licensed marriage and family therapists are legally authorized to provide mental health services and are reimbursed by most all third party payers for the diagnosis and treatment of mental disorders. However, because Medicare does not recognize this particular discipline, California licensed marriage and family therapists are precluded from providing these services and Medicare beneficiaries are precluded from utilizing marriage and family therapists to provide mental health counseling and treatment.

Marriage and family therapists are considered one of the five ''core mental health professions'' recognized by the federal government. Unfortunately, however, we are the only core mental health profession not recognized by Medicare.

We appreciate and thank you for you willingness to take on the challenge of sponsoring legislation to make LMFTs and LPCs eligible for reimbursement by Medicare.

Sincerely,

MARY RIEMERSMA,
Executive Director.

CALIFORNIA ASSOCIATION OF
MARRIAGE AND FAMILY THERAPISTS,
San Diego, CA, November 19, 2001.

Re Medicare Legislation to Recognize Marriage and Family Therapists and Professional Counselors.

Hon. BLANCHE LINCOLN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LINCOLN: We are writing to you in recognition and support of your willingness to cosponsor legislation that would dramatically improve access to mental health services for Medicare beneficiaries. By adding licensed marriage and family therapists and licensed professional counselors, it will open many opportunities within Medicare for patients to locate and receive therapy from appropriately trained and qualified professionals.

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We appreciate and thank you for you willingness to take on the challenge of sponsoring legislation to make LMFTs and LPCs eligible for reimbursement by Medicare.

Sincerely,

MARY RIEMERSMA,
Executive Director.

Mrs. LINCOLN. Mr. President, I am pleased to join my colleague Senator THOMAS today in introducing the Seniors Mental Health Access Improvement Act of 2001.

This bill would expand Medicare coverage to licensed professional counselors and licensed marriage and family therapists. One result of this expanded coverage will be to increase seniors' access to mental health services, especially in rural and underserved areas.

Licensed professional counselors and marriage and family therapists are currently excluded from Medicare coverage even though they meet the same education, training, and examination requirements that clinical social workers do. The only difference is that clinical social workers have been covered under Medicare for over a decade.

Why do we need this legislation? The mental health needs of older Americans are not being met. Although the rate of suicide among older Americans is higher than for any other age group, less than three percent of older Americans report seeing mental health professionals for treatment. And going to their primary care physician is simply not enough. Research shows that most primary care providers receive inadequate mental health training, particularly in geriatrics.

Lack of access to mental health providers is one of the primary reasons why older Americans don't get the mental health treatment they need. Not surprisingly, this problem is exacerbated in rural and underserved areas.

Licensed professional counselors are often the only mental health specialists available in rural and underserved communities. This is true in my home State of Arkansas, where 91 percent of Arkansans reside in a mental health professional shortage area.

Since there are more licensed professional counselors practicing in my State than any other mental health professional, this legislation will significantly increase the number of Medicare—eligible mental health providers in Arkansas. Licensed professional counselors are already serving patients who have private insurance or Medicaid. It is time for Medicare patients to also have access to these professionals.

The bill we are introducing today is an important first step in expanding access to good mental health. By including licensed professional counselors and licensed marriage and family therapists among the list of providers who deliver mental health services to Medicare beneficiaries, we will help ensure that all seniors, no matter where they live, have the opportunity to receive mental health treatment.

By Mr. DORGAN (for himself, Mr. CAMPBELL, and Mr. BINGAMAN):

S. 1761. A bill to amend title XVII of the Social Security Act to provide for coverage of cholesterol and blood lipid screening under the Medicare Program; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I am introducing the Medicare Cholesterol Screening Coverage Act of 2001, along with my colleagues Mr. CAMPBELL and Mr. BINGAMAN. This bipartisan legislation, which also has been introduced in the House of Representatives, would add blood cholesterol screening as a covered benefit for Medicare beneficiaries.

The most recent guidelines from the National Heart, Lung and Blood Institute recommends that all Americans over the age of 20 be screened for high cholesterol. Yet current Medicare policy only covers cholesterol testing for patients who already have heart disease, stroke or other disorders associated with elevated cholesterol levels. Thus, enactment of this bill will help save lives of the approximately one-third of Medicare recipients not already covered for cholesterol testing.

High cholesterol is a major risk factor for heart disease and stroke, the Nation's number 1 and number 3 killers of both men and women. Cardiovascular disease kills nearly a million people each year in this country, more than the next seven leading causes of death combined. In particular, Americans over the age of 65 have the highest rate of coronary heart disease, CHD, in the Nation and about 80 percent of the deaths from CHD occur in this age group. It is not surprising that cardiovascular diseases account for one-third of all Medicare's spending for hospitalizations.

Obviously, in order to slow the onset of CHD, it is first necessary to identify those with elevated cholesterol, which is why passage of this bill is so critical. The importance of identifying those at risk for CHD is illustrated by the results of just released research from Oxford University. This study showed that in elderly people, lowering of cholesterol was associated with a one-third reduction in heart attack and stroke and a substantially reduced need for surgery to repair or open clogged arteries.

Clearly, this bill can save lives. Yet despite the importance of identifying this major, changeable risk factor for cardiovascular disease, screening for cholesterol is not covered by Medicare. I have felt for a long while that our health care system, and Medicare in particular, needs to place a greater emphasis on preventative health care. Implementation of the measures in this bill can potentially decrease the incidence of cardiovascular disease resulting in reduced illness, debilitation and death. Early detection of illness is often an important factor in successful treatment and has been effective in reducing long-term health care costs.

Previously, Congress in its wisdom, has acted to provide for other screening tests including bone mass measurement, and screenings for glaucoma and for colorectal, prostate and breast cancer. Now we must take another step in the right direction by extending Medicare coverage for cholesterol screening.

It is only right that the Congress do what it can to help implement the guidelines of the National Heart, Lung and Blood Institute, and it is only right that we provide these benefits for all Medicare recipients. I urge my Senate colleagues to join me in cosponsoring this piece of legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1761

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Cholesterol Screening Coverage Act of 2001''.

SEC. 2. MEDICARE COVERAGE OF CHOLESTEROL AND BLOOD LIPID SCREENING.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking ''and'' at the end of subparagraph (U);

(B) by adding ''and'' at the end of subparagraph (V); and

(C) by adding at the end the following new subparagraph:

''(W) cholesterol and other blood lipid screening tests (as defined in subsection (ww)(1));''; and

(2) by adding at the end the following new subsection:

''Cholesterol and Other Blood Lipid Screening Test

''(ww)(1) The term 'cholesterol and other blood lipid screening test' means diagnostic testing of cholesterol and other lipid levels of the blood for the purpose of early detection of abnormal cholesterol and other lipid levels.

''(2) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency and type of cholesterol and other blood lipid screening tests for individuals who do not otherwise qualify for coverage for cholesterol and other blood lipid testing based on established clinical diagnoses.''.

(b) FREQUENCY.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (H);

(2) by striking the semicolon at the end of subparagraph (I) and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(J) in the case of a cholesterol and other blood lipid screening test (as defined in section 1861(ww)(1)), which is performed more frequently than is covered under section 1861(ww)(2).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to tests furnished on or after January 1, 2003.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1763. A bill to promote rural safety and improve rural law enforcement; to the Committee on Finance.

Mr. DASCHLE. Mr. President, in the weeks since September 11, we've heard a lot about homeland security. Right now, we're working to make our Nation's infrastructure more secure, our food and water supply safer, and to improve our government's ability to respond to chemical and biological weapons attacks.

To me, homeland security also means giving all of our Nation's law enforcement officers the tools and training they need to do their jobs. And that means recognizing that law enforcement in rural America has its own unique set of challenges: rural law enforcement officers patrol larger areas, and operate under tighter budgets with smaller staffs, than most of their urban and suburban counterparts.

In States like South Dakota, often, just a handful of people are responsible for patrolling an entire county. Law enforcement officers respond to a lot of calls alone, and often have to communicate with each other by cell phone. Backup can be several hours away. Yet we expect the same quality of service, and we demand lower crime rates.

I believe Washington can and must do a better job of helping rural law enforcement do their work. That is why I am proud to join my colleague and friend, Senator TIM JOHNSON, in introducing the Rural Safety Act of 2001.

While TIM and I are the ones introducing this bill, we want to thank all of the South Dakota sheriffs with whom we've spoken whose ideas and experiences are incorporated within it. For my part, I'd like to recognize: Sheriff Mike Milstead of Minnehaha County, Sheriff Mark Milbrandt of Brown County, Sheriff Leidholt of Hughes County, Chief Al Aden of Pierre, Chief Duane Heeney of Yankton, Chief Ken Schwab of my hometown, Aberdeen, Chief Doug Feltman of Mitchell; and Chief Craig Tieszen of Rapid City.

One theme I've heard repeated on visit after visit is this: Washington needs to do a better job working with State and local law enforcement agencies. To me, that means building on what we know works, and developing new initiatives that respond to the special law enforcement challenges of small towns and rural communities. To that end, this bill does six things: First, it builds on our success with the COPS program. COPS has enabled South Dakota communities to hire more than 300 law enforcement officers. Across the country, it's added more than 100,000 new officers to the ''thin blue line.'' Under this proposal, rural communities that hire officers through the COPS program will be eligible for federal funding to keep those offices on for a fourth year.

Second, because rural law enforcement officers have to cover such large areas, rural law enforcement agencies arguably have a greater need for advanced communications equipment than many urban and suburban departments, but have fewer resources to purchase them. Recently, I received a letter from Sgt. Marty Goetsch in the Lawrence County Sheriff's Office in Deadwood, SD. He told me that his office, and its staff of 11, are ''very much behind in the available technology.'' This bill provides funds to help rural communities obtain things like mobile data computers and dash-mounted

video cameras. It will also provide additional funds for training to use new technologies.

Third, this bill will establish a Rural Policing Institute as a way to help rural law enforcement officers upgrade their skills and tactics.

Fourth, it will expand and improve the 9-1-1 emergency assistance systems in rural areas. Many of us take for granted that in an emergency, we can call 9-1-1, and help will be there. In rural and remote areas, the nearest help may be miles away. We need to make sure that people in rural areas can rely on a modern, integrated system of communication between law enforcement, and fire and other safety officials. The Rural Safety Act will provide the resources to finish the job and develop a seamless 9-1-1 system all across America.

Fifth, the bill will help communities create ''restorative justice'' for first-time, non-violent juvenile offenders. These programs offer victims the opportunity to confront youthful offenders and require that these offenders make meaningful restitution to their victims. In many cases, that will meet our societal goals more effectively and more efficiently that costly incarceration.

Sixth, it will enable us to stop the spread of ''meth'' now, before it becomes a crisis. A study released last year by the Center on Addiction and Substance Abuse at Columbia University shows that eighth graders living in rural communities are 104 percent more likely to have used amphetamines, including methamphetamine. We need to stop the use of all of these drugs, but in rural America, meth is particularly addictive, and devastatingly destructive. This proposal will increase prevention and treatment of meth use, and cleanup of meth labs that have been discovered and shut down.

Seventh and finally, our plan will offer gun owners tax credits to purchase gun safes. It will also provide law enforcement agencies with resources to buy and install gun safes or gun storage racks for officers' homes. I don't believe Washington should restrict the right of law-abiding citizens to own guns. But if gun owners want help in preventing accidental gun tragedies, I believe Washington can, and should, help.

When we talk about homeland security, I believe we need to think about the law enforcement needs of those who live in America's rural areas. That is what this bill does, and that is why I encourage all of my colleagues to support it.

By Mr. LIEBERMAN:

S. 1764. A bill to provide incentives to increase research by commercial, for-profit entities to develop vaccines, microbicides, diagnostic technologies, and other drugs to prevent and treat illnesses associated with a biological or chemical weapons attack; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, America has a major flaw in its defenses against bioterrorism. Recent hearings I chaired in the Government Affairs Committee on bioterrorism demonstrated that America has not made a national commitment to research and development of treatments and cures for those who might be exposed to or infected by a biological agent or chemical toxin. Correcting this critical gap is the purpose of legislation I am introducing today.

Obviously, our first priority must be to attempt to prevent the use of these agents and toxins by terrorists, quickly assess when an attack has occurred, take appropriate public health steps to contain the exposure, stop the spread of contagion, and then detoxify the site. These are all critical functions, but in the end we must recognize that some individuals may be exposed or infected. Then the critical issue is whether we can treat and cure them and prevent death and disability.

We need a diversified portfolio of medicines. In cases where we have ample advance warning of an attack and specific information about the agent or toxin, we may be able to vaccinate the vulnerable population in advance. In other cases, even if we have a vaccine, we might well prefer to use medicines that would quickly stop the progression of the disease or the toxic effects. We also need a powerful capacity quickly to develop new countermeasures where we face a new agent or toxin.

Unfortunately, we are woefully short of vaccines and medicines to treat individuals who are exposed or infected. We have antibiotics that seem to work for most of those infected in the current anthrax attack, but these have not prevented five deaths. We have no effective vaccines or medicines for most other biological agents and chemical toxins we might confront. In some cases we have vaccines to prevent, but no medicines to treat, an agent. We have limited capacity to speed the development of vaccines and medicines to prevent or treat novel agents and toxins not currently known to us.

We have provided, and should continue to provide, direct Federal funding for research and development of new medicines, however, this funding is unlikely to be sufficient. Even with ample Federal funding, many private companies will be reluctant to enter into agreements with government agencies to conduct this research. Other companies would be willing to conduct the research with their own capital and at their own risk but are not able to secure the funding from investors.

The legislation I introduce today would provide incentives for private biotechnology companies to form capital to develop countermeasures, medicines, to prevent, treat and cure victims of bioterror attacks. This will enable this industry to become a vital part of the national defense infrastructure and do so for business reasons that make sense for their investors on the bottom line.

Enactment of these incentives is necessary as most biotech companies have no approved products or revenue from product sales to fund research. They rely on investors and equity capital markets to fund the research. They must necessarily focus on research that will lead to product sales and revenue and, thus, to an end to their dependence on investor capital. There is no established or predictable market for countermeasures. Investors are justifiably reluctant to fund this research, which will present challenges similar in complexity to AIDS. Investors need assurances that research on countermeasures has the potential to provide a rate of return commensurate with the risk, complexity and cost of the research, a rate of return comparable to that which may arise from a treatment for cancer, MS, Cystic Fibrosis and other major diseases.

It is in our national interest to enlist these companies in the development of countermeasures as biotech companies tend to be innovative and nimble and intently focused on the intractable diseases for which no effective medical treatments are available.

The incentives I have proposed are innovative and some may be controversial. I invite everyone who has an interest and a stake in this research to enter into a dialogue about the issue and about the nature and terms of the appropriate incentives. I have attempted to anticipate the many complicated technical and policy issues that this legislation raises. The key focus of our debate should be how, not whether, we address this critical gap in our public health infrastructure and the role that the private sector should play. Millions of Americans will be at risk if we fail to enact legislation to meet this need.

My proposal is complimentary to legislation on bioterrorism preparedness sponsored by Senators FRIST and KENNEDY. Their bill, the Bioweapons Preparedness Act of 2001, S. 1715, focuses on many needed improvements in our public health infrastructure. It builds on their proposal in the 106th Congress, S. 2731, and H.R. 4961, sponsored by Congressman RICHARD BURR.

Among the provisions in these bills are initiatives on improving bioterrorism preparedness capacities, improving communication about bioterrorism, protection of children, protection of food safety, and global pathogen surveillance and response. The Senate Appropriations Committee reported legislation to appropriate the funds for the purposes authorized in the Frist-Kennedy proposal and that was incorporated in the stimulus package pending in the Senate before the Thanksgiving recess.

Title IV of their bill includes provisions to expand research on biological agents and toxins, as well as new treatments and vaccines for such agents and

toxins. Since the effectiveness of vaccines, drugs, and therapeutics for many biological agents and toxins often may not ethically be tested in humans, the bill ensures that the Food and Drug Administration, FDA, will finalize by a date certain its rule regarding the approval of new countermeasures on the basis of animal data. Priority countermeasures will also be given enhanced consideration for expedited review by the FDA. They rely on the authority, through an existing Executive Order, to ensure indemnification of sponsors who supply vaccines to the Government. And the bill provides a limited antitrust exemption to allow potential sponsors to discuss and agree upon how to develop, manufacture, and produce new countermeasures, including vaccines, and drugs. Federal Trade Commission and the Department of Justice approval of such agreements is required to ensure such agreements are not anti-competitive.

My legislation builds on these provisions by providing incentives to enable the biotechnology industry acting on its own initiative to fund and conduct research on countermeasures. It includes tax, procurement, intellectual property and liability incentives. Accordingly, my proposal raises issues falling within the jurisdiction of the HELP, Finance, and Judiciary Committees.

The Frist-Kennedy bill and my bill are complimentary. We do need to conform the two bills to one another on some issues: the bills have different definitions of the term ''countermeasure,'' my bill gives the Director of Homeland Defense authority over the countermeasure list whereas the Secretary of Health and Human Services would have authority under Frist/Kennedy, and my bill establishes a ''purchase fund'' and Frist-Kennedy is a ''stockpile.'' The best, most comprehensive approach would be to meld the two bills together.

The bottom line is that we need both bills, one focusing on public health and one focusing on medical research. Without medical research, public health workers will not have the single most important tool to use in an attack, medicine to prevent death and disability and medicine that will help us avoid public panic.

We are fortunate that we have broad-spectrum antibiotics including Cipro to treat the type of anthrax to which so many have been exposed. This treatment seems to be effective before the anthrax symptoms become manifest, and effective to treat cutaneous anthrax, and we have been able to effectively treat some individuals who have inhalation anthrax. I am thankful that this drug exists to treat those who have been exposed, including my own Senate staff. Our offices are immediately above those of Senator DASCHLE.

We have seen how reassuring it is that we have an effective treatment for this biological agent. We see long lines of Congressional staffers and postal workers awaiting their Cipro. Think what it would be like if we could only say, ''We have nothing to treat you and hope you don't contract the disease.'' Think of the public panic that we might see.

I am grateful that this product exists and proud of the fact that the Bayer Company is based in Connecticut. The last thing we should be doing is criticizing this company for their research success. The company has dispensed millions of dollars worth of Cipro free of charge. Criticizing it for the price that it charges tells other research companies that the more valuable their products are in protecting the public health, the more likely they are to be criticized and bullied.

It is fortuitous that Cipro seems to be effective against anthrax. The product was not developed with this use in mind. My point with this legislation is we cannot rely on good fortune and chance in the development of countermeasures. We need to make sure that these countermeasures will be developed. We need more companies like Bayer, we need them focused specifically on developing medicines to deal with the new bioterror threat, and we need to tell them that there are good business reasons for this focus.

We also are fortunate to have an FDA-licensed vaccine, made by BioPort Corporation, that is recommended by our country's medical experts at the DOD and CDC for pre-anthrax exposure vaccination of individuals in the military and some individuals in certain laboratory and other occupational settings where there is a high risk of exposure to anthrax. This vaccine is also recommended for use with Cipro after exposure to anthrax to give optimal and long-lasting protection. That vaccine is not now available for use. We must do everything necessary to make this and other vaccines available in adequate quantities to protect against future attacks. But the point of this legislation is that we need many more Cipro-like and antrax vaccine-like products. That we have these products is the good news; that we have so few others is the problem.

One unfortunate truth in this debate is that we cannot rely upon international legal norms and treaties alone to protect our citizens from the threat of biological or chemical attack.

The United States ratified the Biological and Toxin Weapons Convention, BWC, on January 22, 1975. That Convention now counts 144 nations as parties. Twenty-two years later, on April 24, 1997, the United States Senate joined 74 other countries when it ratified the Chemical Weapons Convention, CWC. While these Conventions serve important purposes, they do not in any way guarantee our safety in a world with rogue states and terrorist organizations.

The effectiveness of both Conventions is constrained by the fact that many countries have failed to sign on to either of them. Furthermore, two signatories of the BWC, Iran and Iraq, are among the seven governments that the Secretary of State has designated as state sponsors of international terrorism, and we know for a fact that they have both pursued clandestine biological weapons programs. The BWC, unlike the CWC, has no teeth, it does not include any provisions for verification or enforcement. Since we clearly cannot assume that any country that signs on to the Convention does so in good faith, the Convention's protective value is limited.

On November 1 of this year, the President announced his intent to strengthen the BWC as part of his comprehensive strategy for combating terrorism. A BWC review conference, held every 5 years to consider ways of improving the Convention's effectiveness, will convene in Geneva beginning November 19. In anticipation of that meeting, the President has urged that all parties to the Convention enact strict national criminal legislation to crack down on prohibited biological weapons activities, and he has called for an effective United Nations procedure for investigating suspicious outbreaks of disease or allegations of biological weapons use.

These steps are welcomed, but they are small. Even sweeping reforms, like creating a more stringent verification and enforcement regime, would not guarantee our safety. The robust verification and enforcement mechanisms in the CWC, for instance, have proven to be imperfect, and scientists agree that it is much easier to conceal the production of biological agents than chemical weapons.

The inescapable fact, therefore, is that we cannot count on international regimes to prevent those who wish us ill from acquiring biological and chemical weapons. We must be prepared for the reality that these weapons could fall into the hands of terrorists, and could be used against Americans on American soil. And we must be prepared to treat the victims of such an attack if it were ever to occur.

On November 26, the Centers for Disease Control issued its interim working draft plan for responding to an outbreak of smallpox. The plan does not call for mass vaccination in advance of a smallpox outbreak because the risk of side effects from the vaccine outweighs the risks of someone actually being exposed to the smallpox virus. At the heart of the plan is a strategy sometimes called ''search and containment.''

This strategy involves identifying infected individual or individuals with confirmed smallpox, identifying and locating those people who come in contact with that person, and vaccinating those people in outward rings of contact. The goal is to produce a buffer of immune individuals and was shown to prevent smallpox and to ultimately eradicate the outbreak. Priorities

would be set on who is vaccinated, perhaps focusing on the outward rings before those at the center of the outbreak. The plan assumes that the smallpox vaccination is effective for persons who have been exposed to the disease as long as the disease has not taken hold.

In practice it may be necessary to set a wide perimeter for these areas because smallpox is highly contagious before it might be diagnosed. There may be many areas subject to search and containment because people in our society travel frequently and widely. Terrorists might trigger attacks in a wide range of locations to multiply the confusion and panic. The most common form of smallpox has a 30-percent mortality rate, but terrorists might be able to obtain supplies of ''flat-type'' smallpox with a mortality rate of 96 percent and hemorrhagic-type smallpox, which is almost always fatal. For these reasons, the CDC plan accepts the possibility that whole cities or other geographic areas could be cordoned off, letting no one in or out, a quarantine enforced by police or troops.

The plan focuses on enforcement authority through police or National Guard, isolation and quarantine, mandatory medical examinations, and rationing of medicines. It includes a discussion of ''population-wide quarantine measures which restrict activities or limit movement of individuals [including] suspension of large public gatherings, closing of public places, restriction on travel [air, rail, water, motor vehicle, and pedestrian], and/or 'cordon sanitaire' [literally a 'sanitary cord' or line around a quarantined area guarded to prevent spread of disease by restricting passage into or out of the area].'' The CDC recommends that States update their laws to provide authority for ''enforcing quarantine measures'' and it recommends that States in ''preevent planning'' identify ''personnel who can enforce these isolation and quarantine measures, if necessary.'' Guide C, Isolation and Quarantine, page 17.

On October 23, 2001, the CDC published a ''Model State Emergency Health Powers Act.'' It was prepared by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities, in conjunction with the National Governors Association, National Conference of State Legislatures, Association of State and Territorial Health Officials, National Association of City and County Health Officers, and National Association of Attorneys General. A copy of the model law is printed at www.publichealthlaw.net. The law would provide powers to enforce the ''compulsory physical separation, including the restriction of movement or confinement, of individuals and/or groups believed to have been exposed to or known to have been infected with a contagious disease from individuals who are believed not to have been exposed or infected, in order to prevent or limit the transmission of the disease to others.'' Federal law on this subject is very strong and the Administration can always rely on the President's Constitution authority as Commander in Chief.

Let us try to imagine, however, what it would be like if a quarantine is imposed. Let us assume that there is not enough smallpox vaccine available for use in a large outbreak, that the priority is to vaccinate those in the outward rings of the containment area first, that the available vaccines cannot be quickly deployed inside the quarantined area, that it is not possible to quickly trace and identify all of the individuals who might have been exposed, and/or that public health workers themselves might be infected. We know that there is no medicine to treat those who do become infected. We know the mortality rates. It is not hard to imagine how much force might be necessary to enforce the quarantine. It would be quite unacceptable to permit individuals to leave the quarantined area no matter how much panic had taken hold.

Think about how different this scenario would be if we had medicines that could effectively treat and cure those who become infected by smallpox. We still might implement the CDC plan but a major element of the strategy would be to persuade people to visit their local clinic or hospital to be dispensed their supply of medicine. We could trust that there would be a very high degree of voluntary compliance. This would give us more time, give us options if the containment is not successful, give us options to treat those in the containment area who are infected, and enable us to quell the public panic.

Because we have no medicine to treat those infected by smallpox, we have to be prepared to implement a plan like the one CDC has proposed. Theirs is the only option because our options are so limited. We need to expand our range of options.

We should not be lulled by the apparent successes with Cipro and the strains of anthrax we have seen in the recent attacks. We have not been able to prevent death in some of the patients with late-stage inhalation anthrax and Robert Stevens, Thomas Morris Jr., Joseph Curseen, Kathy Nguyen, and Ottilie Lundgren have died. This legislation is named in honor of them. What we needed for them, and did not have, is a drug or vaccine that would treat late stage inhalation anthrax.

As I have said, we need an effective treatment for those who become infected with smallpox. We have a vaccine that effectively prevents smallpox infection, and administering this vaccine within four days of first exposure has been shown to offer some protections against acquiring infection and significant protection against a fatal outcome. The problem is that administering the vaccine in this time frame to all those who might have been exposed may be exceedingly difficult. And once infection has occurred, we have no effective treatment options.

In the last century 500 million people have died of smallpox, more than have from any other infectious diseases, as compared to 320 million deaths in all the wars of the twentieth century. Smallpox was one of the diseases that nearly wiped out the entire Native American population in this hemisphere. The last naturally acquired case of smallpox occurred in Somalia in 1977 and the last case from laboratory exposure was in 1978.

Smallpox is a nasty pathogen, carried in microscopic airborne droplets inhaled by its victims. The first signs are headache, fever, nausea and backache, sometimes convulsions and delirium. Soon, the skin turns scarlet. When the fever lets up, the telltale rash appears, flat red spots that turn into pimples, then big yellow pustules, then scabs. Smallpox also affects the throat and eyes, and inflames the heart, lungs, liver, intestines and other internal organs. Death often came from internal bleeding, or from the organs simply being overwhelmed by the virus. Survivors were left covered with pockmarks, if they were lucky. The unlucky ones were left blind, their eyes permanently clouded over. Nearly one in four victims died. The infection rate is estimated to be 25–40 percent for those who are unvaccinated and a single case can cause 20 or more additional infections.

During the 16th Century, 3.5 million Aztecs, more than half the population, died of smallpox during a 2-year span after the Spanish army brought the disease to Mexico. Two centuries later, the virus ravaged George Washington's troops at Valley Forge. And it cut a deadly path through the Crow, Dakota, Sioux, Blackfoot, Apache, Comanche and other American Indian tribes, helping to clear the way for white settlers to lay claim to the western plains. The epidemics began to subside with one of medicine's most famous discoveries: the finding by British physician Edward Jenner in 1796 that English milkmaids who were exposed to cowpox, a mild second cousin to smallpox that afflicts cattle, seemed to be protected against the more deadly disease. Jenner's work led to the development of the first vaccine in Western medicine. While later vaccines used either a killed or inactivated form of the virus they were intended to combat, the smallpox vaccine worked in a different way. It relied on a separate, albeit related virus: first cowpox and the vaccinia, a virus of mysterious origins that is believed to be a cowpox derivative. The last American was vaccinated back in the 1970s and half of the U.S. population has never been vaccinated. It is not known how long these vaccines provide protection, but it is estimated that the term is 3–5 years.

In an elaborate smallpox biowarfare scenario enacted in February 1999 by

the Johns Hopkins Center for Civilian Biodefense Studies, it was projected that within 2 months 15,000 people had died, epidemics were out of control in fourteen countries, all supplies of smallpox vaccine were depleted, the global economy was on the verge of collapse, and military control and quarantines were in place. Within twelve months it was projected that eighty million people worldwide had died.

A single case of smallpox today would become a global public health threat and it has been estimated that a single smallpox bioterror attack on a single American city would necessitate the vaccination of 30–40 million people.

The U.S. Government is now in the process of purchasing substantial stocks of the smallpox vaccine. We then face a very difficult decision on deploying the vaccine. We know that some individuals will have an adverse reaction to this vaccine. No one in the United States has been vaccinated against smallpox in 25 years. Those that were vaccinated back then may not be protected against the disease today. If we had an effective treatment for those who might become infected by smallpox, we would face much less pressure regarding deploying the vaccine. If we face a smallpox epidemic from a bioterrorism attack, we will have no Cipro to reassure the public and we will be facing a highly contagious disease and epidemic. To be blunt, it will make the current anthrax attack look benign by comparison.

Smallpox is not the only threat. We have seen other epidemics in this century. The 1918 influenza epidemic provides a sobering admonition about the need for research to develop medicines. In 2 years, a fifth of the world's population was infected. In the United States the 1918 epidemic killed more than 650,000 people in a short period of time and left 20 million seriously ill, one-fourth of the entire population. The average lifespan in the U.S. was depressed by ten years. In just 1 year, the epidemic killed 21 million human beings worldwide—well over twice the number of combat deaths in the whole of World War I. The flu was exceptionally virulent to begin with and it then underwent several sudden and dramatic mutations in its structure. Such mutations can turn flu into a killer because its victims' immune systems have no antibodies to fight off the altered virus. Fatal pneumonia can rapidly develop.

Another deadly toxin, ricin toxin, was of interest to the al-Qaeda terrorist network. At an al-Qaeda safehouse in Saraq Panza, Kabul reporters found instructions for making ricin. The instructions make chilling reading. ''A certain amount, equal to a strong dose, will be able to kill an adult, and a dose equal to seven seeds will kill a child,'' one page reads. Another page says: ''Gloves and face mask are essential for the preparation of ricin. Period of death varies from 3–5 days minimum, 4–14 days maximum.'' The instructions listed the symptoms of ricin as vomiting, stomach cramps, extreme thirst, bloody diarrhoea, throat irritation, respiratory collapse and death.

No specific treatment or vaccine for ricin toxin exists. Ricin is produced easily and inexpensively, highly toxic, and stable in aerosolized form. A large amount of ricin is necessary to infect whole populations, the amount of ricin necessary to cover a 100-km^2 area and cause 50 percent lethality, assuming aerosol toxicity of 3 mcg/kg and optimum dispersal conditions, is approximately 4 metric tons, whereas only 1 kg of Bacillus anthracis is required. But it can be used to terrorize a large population with great effect because it is so lethal.

Use of ricin as a terror weapon is not theoretical. In 1991 in Minnesota, 4 members of the Patriots Council, an extremist group that held antigovernment and antitax ideals and advocated the overthrow of the U.S. Government, were arrested for plotting to kill a U.S. marshal with ricin. The ricin was produced in a home laboratory. They planned to mix the ricin with the solvent dimethyl sulfoxide, DMSO, and then smear it on the door handles of the marshal's vehicle. The plan was discovered, and the 4 men were convicted. In 1995, a man entered Canada from Alaska on his way to North Carolina. Canadian custom officials stopped the man and found him in possession of several guns, $98,000, and a container of white powder, which was identified as ricin. In 1997, a man shot his stepson in the face. Investigators discovered a makeshift laboratory in his basement and found agents such as ricin and nicotine sulfate. And, ricin was used by the Bulgarian secret police when they killed Georgi Markov by stabbing him with a poison umbrella as he crossed Waterloo Bridge in 1978.

Going beyond smallpox, influenza, and ricin, we do not have an effective vaccine or treatment for dozens of other deadly and disabling agents and toxins. Here is a partial list of some of the other biological agents and chemical toxins for which we have no effective treatments: clostridium botulinum toxin, botulism; francisella tularensis, tularaemia; Ebola hemorrhagic fever, Marbug hemorrhagic fever, Lassa fever, Julin, Argentine hemorrhagic fever; Coxiella burnetti, Q fever; brucella species, brucellosis; burkholderia mallei, glanders; Venezuelan encephalomyelitis, eastern and western equine encephalomyelitis, epsilon toxin of clostridium perfringens, staphylococcus entretoxin B, salmonella species, shigella dysenteriae, escherichia coli O157:H7, vibrio cholerae, cryptosporidium parvum, nipah virus, hantaviruses, tickborne hemorrhagic fever viruses, tickborne encephalitis virus, yellow fever, nerve agents, tabun, sarin, soman, GF, and VX; blood agents, hydrogen cyanide and cyanogens chloride; blister agents, lewisite, nitrogenadn sulfur mustards, and phosgene oxime; heavy metals, arsenic, lead, and mercury; and volatile toxins, benzene, chloroform, trihalomethanes; pulmonary agents, Phosgene, chlorine, vinly chloride; and incapacitating agents, BZ.

The naturally occurring forms of these agents and toxins are enough to cause concern, but we also know that during the 1980s and 1990s the Soviet Union conducted bioweapons research at 47 laboratories and testing sites, employed nearly 50,000 scientists in the work, and that they developed genetically modified versions of some of these agents and toxins. The goal was to develop an agent or toxin that was particularly virulent or not vulnerable to available antibiotics.

The United States has publicly stated that five countries are developing biological weapons in violation of the Biological Weapons convention, North Korea, Iraq, Iran, Syria, and Libya, and stated that additional countries not yet named, possibly including Russia, China, Israel, Sudan and Egypt, are also doing so as well.

What is so insidious about biological weapons is that in many cases the symptoms resulting from a biological weapons attack would likely take time to develop, so an act of bioterrorism may go undetected for days or weeks. Affected individuals would seek medical attention not from special emergency response teams but in a variety of civilian settings at scattered locations. This means we will need medicines that can treat a late stage of the disease, long after the infection has taken hold.

We must recognize that the distinctive characteristic of biological weapons is that they are living micro-organisms and are thus the only weapons that can continue to proliferate without further assistance once released in a suitable environment.

The lethality of these agents and toxins, and the panic they can cause, is quite frightening. The capacity for terror is nearly beyond comprehension. I do not believe it is necessary to describe the facts here. My point is simple: we need more than military intelligence, surveillance, and public health capacity. We also need effective medicines. We also need more powerful research tools that will enable us to quickly develop treatments for agents and toxins not on this or any other list.

We need to do whatever it takes to be able to reassure the American people that hospitals and doctors have powerful medicines to treat them if they are exposed to biological agents or toxins, that we can contain an outbreak of an infectious agent, and that there is little to fear. To achieve this objective, we need to rely on the entrepreneurship of the biotechnology industry.

There is already some direct funding of research by the Defense Advanced Research Projects Agency, DARPA, the National Institutes of Health, NIH, and the Centers for Disease Control, CDC. This research should go forward.

DARPA, for instance, has been described as the Pentagon's ''venture capital fund,'' its mission to provide seed money for novel research projects that offer the potential for revolutionary findings. Last year, DARPA's Unconventional Pathogen Countermeasures program awarded contracts totalling $50 million to universities, foundations, pharmaceutical and biotechnology companies seeking new ways to fight biological agents and toxins.

The Unconventional Pathogen Countermeasures program now funds 43 separate research efforts on antibacterials, anti-toxins, anti-virals, decontamination, external protection from pathogens, immunization and multi-purpose vaccines and treatments. A common thread among many of these undertakings is the goal of developing drugs that provide broad-spectrum protection against several different pathogens. This year, with a budget of $63 million, the program has received over 100 research proposals in the last two months alone.

Some of this DARPA research is directed at developing revolutionary, broad-spectrum, medical countermeasures against significantly pathogenic microorganisms and/or their pathogenic products. The goal is to develop countermeasures that are versatile enough to eliminate biological threats, whether from natural sources or modified through bioengineering or other manipulation. The countermeasures would need the potential to provide protection both within the body and at the most common portals of entry, e.g., inhalation, ingestion, transcutaneous. The strategies might include defeating the pathogen's ability to enter the body, traverse the bloodstream or lymphatics, and enter target tissues; identifying novel pathogen vulnerabilities based on fundamental, critical molecular mechanisms of survival or pathogenesis, e.g., Type III secretion, cellular energetics, virulence modulation; constructing unique, robust vehicles for the delivery of countermeasures into or within the body; and modulating the advantageous and/or deleterious aspects of the immune response to significantly pathogenic microorganisms and/or the pathogenic products in the body

While DAPRA's work is specifically aimed at protecting our military personnel, the National Institutes of Health also spent $49.7 million in the last fiscal year to find new therapies for those who contract smallpox and on systems for detecting the disease. In recent years, NIH's research programs have sought to create more rapid and accurate diagnostics, develop vaccines for those at risk of exposure to biological agents, and improve treatment for those infected. Moreover, in the last fiscal year, the Centers for Disease Control has allocated $18 million to continue research on an anthrax vaccine and $22.4 million on smallpox research.

Some companies are willing to enter into a research relationships funded by DARPA and other agencies to develop countermeasures. Relationships between the Government and private industry can be very productive, but they can also involve complex issues reflecting the different cultures of government and industry. Some companies, including some of the most entrepreneurial, might prefer to take their own initiative to conduct this research. Relationships with government entities involve risks, issues, and bureaucracy that are not present in relationships among biotechnology companies and between them and non-governmental partners.

The Defense Departments Joint Vaccine Acquisition Program, JVAP, illustrates the problems with a government led and managed program. A report in December 2000 by a panel of independent experts found that the current program ''is insufficient and will fail'' and recommended it adopt an approach more on the model of a private sector effort. It needs to adopt ''industry practices,'' ''capture industry interest,'' ''implement an organizational alignment that mirrors the vaccine industry's short chain of command and decision making,'' ''adopt an industry-based management philosophy,'' and ''develop a sound investment strategy.'' It bemoaned the ''extremely limited'' input from industry in the JVAP program.

It is clear from this experience that we should not rely exclusively on government funding of countermeasures research. We should take advantage of the entrepreneurial fervor, and the independence, of our biotechnology industry entrepreneurs. It is not likely that the Government will be willing or able to provide sufficient funding for the development of the countermeasures we need. Some of the most innovative approaches to vaccines and medicines might not be funded with the limited funds available to the Government. We need to provide incentives that will encourage every biotech company to review its research priorities and technology portfolio for its relevance and potential for countermeasure research. Some of this research is early stage, basic research that is being developed and considered only for its value in treating an entirely different disease. We need to kindle the imagination of biotechnology companies and their tens of thousands of scientists regarding countermeasures research.

My proposal would supplement direct Federal government funding of research with incentives that make it possible for private companies to form the capital to conduct this research on their own initiative, utilizing their own capital, and at their own risk, all for good business reasons going to their bottom line.

The U.S. biotechnology industry, approximately 1,300 companies, spent $13.8 billion on research last year. Only 350 of these companies have managed to go public. The industry employs 124,000, Ernest & Young data, people. The top five companies spent an average of $89,000 per employee on research, making it the most research-intensive industry in the world. The industry has 350 products in human clinical trials targeting more than 200 diseases. Losses for the industry were $5.8 billion in 2001, $5.6 billion in 2000, $4.4 billion in 1999, $4.1 billion in 1998, $4.5 billion in 1997, $4.6 billion in 1996, and similar amounts before that. In 2000 fully 38 percent of the public biotech companies had less than 2 years of funding for their research. Only one-quarter of the biotech companies in the United States are publicly traded and they tend to be the best funded.

There is a broad range of research that could be undertaken under this legislation. Vaccines could be developed to prevent infection or treat an infection from a bioterror attack. Broad-spectrum antibiotics are needed. Also, promising research has been undertaken on antitoxins that could neutralize the toxins that are released, for example, by anthrax. With anthrax it is the toxins, not the bacteria itself, that cause death. An antitoxin could act like a decoy, attaching itself to sites on cells where active anthrax toxin binds and then combining with normal active forms of the toxin and inactivating them. An antitoxin could block the production of the toxin.

We can rely on the innovativeness of the biotech industry, working in collaboration with academic medical centers, to explore a broad range of innovative approaches. This mobilizes the entire biotechnology industry as a vital component of our national defense against bioterror weapons.

The legislation takes a comprehensive approach to the challenges the biotechnology industry faces in forming capital to conduct research on countermeasures. It includes capital formation tax incentives, guaranteed purchase funds, patent protections, and liability protections. I believe we will have to include each of these types of incentives to ensure that we mobilize the biotechnology industry for this urgent national defense research.

I am aware that all three of the tax incentives I have proposed, and both of the two patent incentives I have proposed, may be controversial. In my view, we can debate tax or patent policy as long as you want, but let's not lose track of the issue here, development of countermeasures to treat people infected or exposed to lethal and disabling bioterror weapons.

We know that incentives can spur research. In 1983 we enacted the Orphan Drug Act to provide incentives for companies to develop treatments for rare diseases with small potential markets deemed to be unprofitable by the industry. In the decade before this legislation was enacted, fewer than 10 drugs for orphan diseases were developed and these were mostly chance discoveries. Since the Act became law, 218

orphan drugs have been approved and 800 more are in the pipeline. The Act provides 7 years of market exclusivity and a tax credit covering some research costs. The effectiveness of the incentives we have enacted for orphan disease research show us how much we can accomplish when we set a national priority for certain types of research.

The incentives I have proposed differ from those set by the Orphan Drug Act. We need to maintain the effectiveness of the Orphan Drug Act and not undermine it by adding many other disease research targets. In addition, the tax credits for research for orphan drug research have no value for most biotechnology companies because few of them have tax liability with respect to which to claim the credit. This explains why I have not proposed to utilize tax credits to spur countermeasures research. It is also clear that the market for countermeasures is even more speculative than the market for orphan drugs and we need to enact a broader and deeper package of incentives.

The Government determines which research is covered by the legislation. The legislation confers on the Director of the Office of Homeland Security, in consultation with the Secretary of Defense and Secretary of Health and Human Services, authority to set the list of agents and toxins with respect to which the legislation applies. The Director determines which agents and toxins present a threat and on whether the countermeasures are more likely to be developed with the application of the incentives of the legislation. The Director may determine that an agent or toxin does not present a threat or that countermeasures are not more likely to be developed with the incentives. The legislation includes an illustrative list of agents and toxins that might be selected by the Director. The decisions of the Director are final and cannot be subject to judicial review.

Once the list of agents and toxins is set, companies may register with the Food and Drug Administration their intent to undertake research and development of a countermeasure to prevent or treat the agent or toxin. This registration is required only for companies that seek to be eligible for the tax, purchase, patent, and liability provisions of the legislation. The registration does not apply to non-profit entities or to companies that do not seek such eligibility. The registration requirement gives the FDA vital information about the research effort and the personnel involved with the research.

The Director of the Office of Homeland Security then may certify that the company is eligible for the tax, purchase, patent, and liability incentives in the legislation. Eligibility for the purchase fund, patent and liability incentives is contingent on successful development of a countermeasure according to the standards set in the legislation.

The legislation contemplates that a company might well register and seek certification with respect to more than one research project and become eligible for the tax, purchase, patent, and liability incentives for each. There is no policy rationale for limiting a company to one registration and one certification.

This process is similar to the current registration process for research on orphan, rare, diseases. In that case, companies that are certified by the FDA become eligible for both tax and market exclusivity incentives. This process gives the Government complete control on the number of registrations and certifications. This gives the Government control over the cost and impact of the legislation on private sector research.

The legislation includes three tax incentives to enable biotechnology companies to form capital to fund research and development of countermeasures. Companies must irrevocably elect only one of the incentives with regard to the research. These tax incentives are available only to biotechnology companies with less than $750,000,000 in paid-in capital.

The paid-in capital of a corporation is quite distinct from the market capitalization of the firm. The paid-in capital is the aggregate amount paid by investors into the corporation when this stock was issued, the price at issue multiplied by the number of shares sold. The market capitalization is the value of this stock in the stock market as it is traded among investors. I have focused on the paid-in capital as this is the amount of capital actually available to the corporation to fund its research.

The legislation includes three different tax incentives to give companies flexibility in forming capital to fund the research. Each of the options comes with advantages and limitations that may make it appropriate or inappropriate for a given company or research project. We do not now know fully how investors and capital markets will respond to the different options, but we assume that companies will consult with the investor community about which option will work best for a given research project. Capital markets are diverse and investors have different needs and expectations. Over time these markets and investor expectations evolve. If companies register for more than one research project, they may well utilize different tax incentives for the different projects.

Companies are permitted to undertake a series of discrete and separate research projects and make this election with respect to each project. They may only utilize one of the options with respect to each of these research projects.

The company is eligible to establish an R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners. For example, under this arrangement, the research and development tax credits and depreciation deductions for the company may be passed by the corporation through to its partners to be used to offset their individual tax liability. These deductions and credits are then lost to the corporation.

The company is eligible to issue a special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock held for at least 3 years. This is a modification of the current Section 1202 where only 50 percent of the gains are not taxed. This provision is adapted from legislation I have introduced, S. 1134, and introduced in the House by Representatives DUNN and MATSUI, H.R. 2383. A similar bill has been introduced by Senator COLLINS, S. 455.

The company is eligible to receive refunds for Net Operating Losses, NOLs, to fund the research. Under current law, net operating losses can only be used to offset a company's tax liability. If a company has no profits and therefore no tax liability, it cannot use its net operating losses. It can carry them forward, but the losses have no current value. This option would allow the company to receive a refund of its NOLs at a rate of 75 percent of their value. Once the company becomes profitable, and incurs tax liability, it must repay all of the refunds it has received. The provision in my legislation is adapted from bills introduced by Senator TORRICELLI, S. 1049, and Congressman ROBERT MATSUI, H.R. 2153.

A company that elects to utilize one of these incentives is not eligible to receive benefits of the Orphan Drug Tax Credit. Companies that can utilize tax credits, companies with taxable income and tax liability, might find the Orphan Credit more valuable. The legislation includes an amendment to the Orphan Credit to correct a defect in the current credit. The amendment has been introduced in the Senate as S. 1341 by Senators HATCH, KENNEDY and JEFFORDS. The amendment simply states that the Credit is available starting the day an application for orphan drug status is filed, not the date the FDA finally acts on it. The amendment was one of many initiatives championed by Lisa J. Raines, who died on September 11 in the plane that hit the Pentagon, and the amendment is named in her honor. As we go forward in the legislative process, I hope we will have an opportunity to speak in more detail about the service of Ms. Raines on behalf of medical research, particularly on rare diseases.

My legislation does not include an enhanced tax credit for this research. Very few biotechnology companies can utilize a tax credit as they have no taxable revenue and tax liability with respect to which to claim a credit. Instead, they can carry the credit forward and utilize it when they do have tax liability. But that may be many years from now. That is why I have focused on other incentives to assist the

biotechnology industry to form capital to fund this countermeasures research.

The guaranteed purchase fund, and the patent bonus and liability provisions described below provide an additional incentive for investors to fund the research. Without capital from investors these biotechnology companies do not have the capacity, irrespective of their interest, to conduct the research.

The market for countermeasures is speculative and small. This means that if a company successfully develops a countermeasure, it may not receive sufficient revenue on sales to justify the risk and expense of the research. This is why the legislation establishes a countermeasures purchase fund that will define the market for the products with some specificity before the research begins.

The fund managers will set standards for which countermeasures it will purchase and define the financial terms of the purchase commitment. This will enable companies to evaluate the market potential of its research before it launches into the project. The specifications will need to be set with sufficient specificity so that the company, and its investors, can evaluate the market and with enough flexibility so that it does not inhibit the innovativeness of the researchers. This approach is akin to setting a performance standard for a new military aircraft.

The legislation provides that the purchase fund is not obligated to purchase more than one product per class. This seeks to avoid a situation where the Government must purchase more than one product when it only intends to use one. But it might make more sense, as an incentive, for the Government to commit to purchasing more than one product so that many more than one company conducts the research. A winner-take-all system may well intimidate some companies and we may end up without a countermeasure to be purchased. It is also possible that we will find that we need more than one countermeasure because different products are useful for different patients. We may also find that the first product developed is not the most effective. Given the urgency of the research, we would like to have the problem of seeing more than one effective countermeasure developed. How we reconcile these competing considerations is a key issue we need to resolve.

My legislation provides that the countermeasure must be approved by the FDA. The standards that the FDA should apply in reviewing these types of products is an issue have been discussed in some detail and we need to fashion the most effective provision on this subject. We need to recognize that the requirement for FDA approval might, in some cases, not be needed, appropriate or possible.

The purchase commitment for countermeasures is available to any company irrespective of its paid-in capital.

Intellectual property protection of research is essential to biotechnology companies for one simple reason: they need to know that if they successfully develop a medical product another company cannot expropriate it. It's a simple matter of incentives.

The patent system has its basis in the U.S. Constitution where the Federal Government is given the mandate to ''promote the Progress of Science and the Useful Arts by securing for a limited time to Authors and Inventors the exclusive right to their respective Writings and Discoveries.'' In exchange for full disclosure of the terms of their inventions, inventors are granted the right to exclude others from making, using, or selling their inventions for a limited period of time. This quid pro quo provides investors with the incentive to invent. In the absence of the patent law, discoverable inventions would be freely available to anyone who wanted to use them and inventors would not be able to capture the value of their inventions or secure a return on their investments.

The patent system strikes a balance. Companies receive limited protection of their inventions if they are willing to publish the terms of their invention for all to see. At the end of the term of the patent, anyone can practice the invention without any threat of an infringement action. During the term of the patent, competitors can learn from the published description of the invention and may well find a new and distinct patentable invention.

The legislation provides two types of intellectual property protection. One simply provides that the term of the patent on the countermeasure will be the term of the patent granted by the Patent and Trademark Office without any erosion due to delays in approval of the product by the Food and Drug Administration. The second provides that a company that successfully develops a countermeasure will receive a bonus of 2 years on the term of any patent held by that company. Companies must elect one of these two protections and only small biotechnology companies may elect the second protection. Large, profitable pharmaceutical companies may elect only the first of the two options.

The first protection against erosion of the term of the patent is an issue that is partially addressed in current law, the Hatch-Waxman Patent Term Restoration Act. That act provides partial protection against erosion of the term, length of a patent when there are delays at the FDA in approving a product. The erosion occurs when the PTO issues a patent before the product is approved by the FDA. In these cases, the term of the patent is running but the company cannot market the product. The Hatch-Waxman Act provides some protections against erosion of the term of the patent, but the protections are incomplete. As a result, many companies end up with a patent with a reduced term, sometimes substantially reduced.

The issue of patent term erosion has become more serious due to changes at the PTO in the patent system. The term of a patent used to be fixed at 17 years from the date the patent was granted by the PTO. It made no difference how long it took for the PTO to process the patent application and sometimes the processing took years, even decades. Under this system, there were cases where the patent would issue before final action at the FDA, but there were other cases where the FDA acted to approve a product before the patent was issued. Erosion was an issue, but it did not occur in many cases.

Since 1995 the term of a patent has been set at 20 years from the date of application for the patent. This means that the processing time by the PTO of the application all came while the term of the patent is running. This gives companies a profound incentive to rush the patent through the PTO. Under the old system, companies had the opposite incentive. With patents being issued earlier by the PTO, the issue of erosion of patent term due to delays at the FDA is becoming more serious and more common.

The provision in my legislation simply states that in the case of bioterrorism countermeasures, no erosion in the term of the patent will occur. The term of the patent at the date of FDA approval will be the same as the term of the patent when it was issued by the PTO. There is no extension of the patent, simply protections against erosion. Under the new 20-year term, patents might be more or less than 17 years depending on the processing time at the PTO, and all this legislation says is that whatever term is set by the PTO will govern irrespective of the delays at the FDA. This option is available to any company that successfully develops a countermeasure eligible to be purchased by the fund.

The second option, the bonus patent term, is only available to small biotechnology companies. It provides that a company that successfully develops a countermeasure is entitled to a 2-year extension of any patent in its portfolio. This does not apply to any patent of another company bought or transferred in to the countermeasure research company.

I am well aware that this bonus patent term provision will be controversial with some. A company would tend to utilize this option if it owned the patent on a product that still had, or might have, market value at the end of the term of the patent. Because this option is only available to small biotechnology companies, most of whom have no product on the market, in most cases they would be speculating about the value of a product at the end of its patent. The company might apply this provision to a patent that otherwise would be eroded due to FDA delays or it might apply it to a patent that was not eroded. The result might be a patent term that is no longer than the patent term issued by the PTO. It all depends on which companies elect

this option and which patent they select. In some cases, the effect of this provision might be to delay the entry onto the market of lower priced generics. This would tend to shift some of the cost of the incentive to develop a countermeasure to insurance companies and patients with an unrelated disease.

My rationale for including the patent bonus in the legislation is simple: I want this legislation to say emphatically that we mean business, we are serious, and we want biotechnology companies to reconfigure their research portfolios to focus in part on development of countermeasures. The other provisions in the legislation are powerful, but they may not be sufficient.

This proposal protects companies willing to take the risks of producing anti-terrorism products for the American public from potential losses incurred from lawsuits alleging adverse reactions to these products. It also preserves the right for plaintiffs to seek recourse for alleged adverse reactions in Federal District Court, with procedural and monetary limitations.

Under the plan, the Secretary of HHS is authorized, and in the case of contractors with HHS, is required, to indemnify and defend persons engaged in research, development and other activities related to biological defense products through execution of ''indemnification and defense agreements.'' An exclusive means of resolving civil cases that fall within the scope of the indemnification and defense agreements is provided with litigation rights for injured parties. Non-economic damages are limited to $250,000 per plaintiff and no punitive or exemplary damages may be awarded.

Some have tried to apply the existing Vaccine Injury Compensation Program, VICP, to this national effort. That is inappropriate because that program will be extremely difficult to use, both administratively and scientifically. For example, it would take several years to develop the appropriate ''table'' that identifies a compensable injury. Companies will be liable during this process. Note that when VICP was created, there had been studies of what adverse reactions to mandated childhood vaccines had occurred and the table was based largely on this experience. Even so, it has taken years of effort, ultimately resulting in wholesale revisions to the table by regulation, to get the current table in place. For antibioterrorism products currently being developed, it will simply be impossible to construct a meaningful Vaccine Injury Table, there will be no experience with the product.

The Frist-Kennedy bill relies on the President's Executive Order regarding liability protections, so there is a basis for an agreement regarding this issue as applied to bioterrorism countermeasures. The provisions that I have proposed are superior to those in the Executive Order because the order provides protection only on a contract basis. So, it doesn't provide protection based on the product being developed, only if that product is being developed under a specific government contract. Therefore, it's negotiated case by case by HHS and a company. Your proposal provides assurance to companies, especially small and medium sized companies, that they will be protected. This will allow them to go forward with their development plans. Their lawyers may be leery of trying to negotiate their own deal with HHS. So, the EO may be effective for a large company when it negotiates making additional smallpox vaccine, but it provides little assurance to a small company that wants to start development. Also, the administration says the EO will be used to protect companies, however, the next administration could interpret it differently. That's why a statutory provision will provide greater assurance to companies.

The legislation focuses intently on development of vaccines and medicines, but it is possible that we will face biological agents and chemical agents we've never seen before. As I've mentioned, the Soviet Union bioterror research focused in part on use of genetic modification technology to develop agents and toxins that currently-available antibiotics can not treat. Australian researchers accidentally created a modified mousepox virus, which does not affect humans, but it was 100 percent lethal to the mice. Their research focused on trying to make a mouse contraceptive vaccine for pest control. The surprise was that it totally suppressed the ''cell-mediated response,'' the arm of the immune system that combats viral infection. To make matters worse, the engineered virus also appears unnaturally resistant to attempts to vaccinate the mice. A vaccine that would normally protect mouse strains that are susceptible to the virus only worked in half the mice exposed to the killer version. If bioterrorists created a human version of the virus, vaccination programs would be of limited use. This highlights the drawback of working on vaccines against bioweapons rather than treatments.

With the advances in gene sequencing, genomics, we will know the exact genetic structure of a biological agent. This information in the wrong hands could easily be manipulated to design and possibly grow a lethal new bacterial and viral strains not found in nature. A scientist might be able to mix and match traits from different microorganisms, called recombinant technology, to take a gene that makes a deadly toxin from one strain of bacteria and introduce it into other bacterial strains. Dangerous pathogens or infectious agents could be made more deadly, and relatively benign agents could be designed as major public health problems. Bacteria that cause diseases such as anthrax could be altered in such a way that would make current vaccines or antibiotics against them ineffective. It is even possible that a scientist could develop an organism that develops resistance to antibiotics at an accelerated rate.

This means we need to develop technology, research tools, that will enable us to quickly develop a tailor-made, specific countermeasure to a previously unknown organism or agent. These research tools will enable us to develop a tailor-made vaccine or drug to deploy as a countermeasure against a new threat. The legislation authorizes companies to register and receive a certification making them eligible for the tax incentives in the bill for this research.

Perhaps the greatest strength of our biomedical research establishment in the United States is the synergy between our superb basic research institutions and private companies. The Bayh-Dole Act and Stevenson-Wydler Act form the legal framework for mutually beneficially partnerships between academia and industry. My legislation strengthens this synergy and these relationships with two provisions, one to upgrades in the basic research infrastructure available to conduct research on countermeasures and the other to increase cooperation between the National Institutes of Health and private companies.

Research on countermeasures necessitates the use of special facilities where biological agents can be handled safely without exposing researchers and the public to danger. Very few academic institutions or private companies can justify or capitalize the construction of these special facilities. The Federal Government can facilitate research and development of countermeasures by financing the construction of these facilities for use on a fee-for-service basis. The legislation authorizes appropriations for grants to nonprofit and for-profit institutions to construct, maintain, and manage up to ten Biosafety Level 3–4 facilities, or their equivalent, in different regions of the country for use in research to develop countermeasures. BSL 3–4 facilities are ones used for research on indigenous, exotic or dangerous agents with potential for aerosol transmission of disease that may have serious or lethal consequences or where the agents pose high risk of life-threatening disease, aerosol-transmitted lab infections, or related agents with unknown risk of transmission. The Director of the Office and NIH shall issue regulations regarding the qualifications of the researchers who may utilize the facilities. Companies that have registered with and been certified by the Director, to develop countermeasures under Section 5(d) of the legislation, shall be given priority in the use of the facilities.

The legislation also reauthorizes a very successful NIH-industry partnership program launched in FY 2000 in Public Law 106–113. The funding is for partnership challenge grants to promote joint ventures between NIH and

its grantees and for-profit biotechnology, pharmaceutical and medical device industries with regard to the development of countermeasures, as defined in Section 3 of the bill, and research tools, as defined in Section 4(d)(3) of the bill. Such grants shall be awarded on a one-for-one matching basis. So far the matching grants have focused on development of medicines to treat malaria, tuberculosis, emerging and resistant infections, and therapeutics for emerging threats. My proposal should be matched by reauthorization of the challenge grant program for these deadly diseases.

My legislation is carefully calibrated to provide incentives only where they are needed. This accounts for the choices in the legislation about which provisions are available to small biotechnology companies and large pharmaceutical companies.

Most biotechnology companies rely on infusions of investor capital to fund research, so the capital formation tax incentives only apply to them. Large pharmaceutical companies have ample revenues from product sales, and access to debt capital, so they do not need these incentives for capital formation.

The guaranteed purchase fund applies to any company that successfully develops a countermeasure. There is no reason to make any distinction between small and large companies. They all need to know the terms and dimensions of the potential market for the products they seek to develop. With countermeasures the market may well be uncertain or small, necessitating the creation of the purchase fund.

The patent protection provisions are also well calibrated. Both small and large companies face the patent term erosion problem due to delays at the FDA. There is no reason why companies that successfully develop a countermeasure should end up with a patent with an eroded term.

With regard to the patent bonus provision, this is included to supplement the capital formation tax incentives for small biotechnology companies. It provides a dramatic statement to investors that this research makes good business sense. As capital formation is not a challenge for a large pharmaceutical company, this patent bonus provision is not available to them.

Finally, with regard to the liability provisions, there is no reason to make any distinction between small and large companies.

The legislation makes choices. It sets the priorities. It provides a dose of incentives and seeks a response in the private sector. We are attempting here to do something that has not been done before. This is uncharted territory. And it's also an urgent mission.

There may be cases where a countermeasure developed to treat a biological toxin or chemical agent will have applications beyond this use. A broad-spectrum antibiotic capable of treating many different biological agents may well have the capacity to treat naturally occurring diseases.

This same issue arises with the Orphan Drug Act, which provides both tax and FDA approval incentives for companies that develop medicines to treat rare diseases. In some cases these treatments can also be used for larger disease populations. There are few who object to this situation. We have come to the judgment that the urgency of this research is worth the possible additional benefits that might accrue to a company.

In the context of research to develop countermeasures, I do not consider it a problem that a company might find a broader commercial market for a countermeasure. Indeed, it may well be the combination of the incentives in this legislation and these broader markets that drives the successful development of a countermeasure. If our intense focus on developing countermeasures, and research tools, provides benefits for mankind going well beyond terror weapons, we should rejoice. If this research helps us to develop an effective vaccine or treatment for AIDS, we should give the company the Nobel Prize for Medicine. If we do not develop a vaccine or treatment for AIDS, we may see 100 million people die of AIDS. We also have 400 million people infected with malaria and more than a million annual deaths. Millions of children die of diarrhea, cholera and other deadly and disabling diseases. Countermeasures research may deepen our understanding of the immune system and speed development of treatments for cancer and autoimmune diseases. That is not the central purpose of this legislation, but it is an additional rationale for it.

The issue raised by my legislation is very simple: do we want the Federal Government to fund and supervise much of the research to develop countermeasures or should we also provide incentives that make it possible for the private sector, at its own expense, and at its own risk, to undertake this research for good business reasons. The Frist-Kennedy legislation focuses effectively on direct Federal funding and coordination issues, but it does not include sufficient incentives for the private sector to undertake this research on its own initiative. Their proposal and mine are perfectly complimentary. We need to enact both to ensure that we are prepared for bioterror attacks.

I ask unanimous consent that an outline of my legislation appear at this point in the RECORD.

There being no objection, the outline was ordered to be printed in the RECORD, as follows

BIOLOGICAL AND CHEMICAL WEAPONS COUNTERMEASURES RESEARCH ACT OF 2001

The premise of the legislation is that there will be limits on direct Federal funding of research and development of countermeasures, vaccines, drugs, and other medicines, to prevent or treat infections from biological and chemical agents and toxins. The legislation proposes incentives that will enable biotechnology companies to take the initiative, for good business reasons, to conduct research to develop these countermeasures.

The incentives are needed because most biotech companies have no approved products or revenue from product sales to fund research. They rely on investors and equity capital markets to fund the research. These companies must focus on research that will lead to product sales and revenue and end their dependence on investor capital. When they are able to form the capital to fund research, biotech companies tend to be innovative and nimble and focused on the intractable diseases for which no effective medical treatments are available.

There is no established or predictable market for countermeasures. Investors are justifiably reluctant to fund this research, which will present technical challenges similar in complexity to development of effective treatments for AIDS. Investors need assurances that research on countermeasures has the potential to provide a rate of return commensurate with the risk, complexity and cost of the research, a rate of return comparable to that which may arise from a treatment for cancer, MS, Cystic Fibrosis and other major diseases or from other investments.

The legislation provides tax incentives to enable biotech companies to form capital to conduct the research. It then provides a guaranteed and pre-determined market for the countermeasures and special intellectual property protections to serve as a substitute for a market. Finally, it establishes liability protections for the countermeasures that are developed.

Specifics of the legislation are as follows: one, Office of Homeland Security sets research priorities in advance. Biotech companies that seek to be eligible for the incentives in the legislation must register with the Food and Drug Administration and be certified as eligible for the incentives; two, once a company is certified as eligible for the incentives, it becomes eligible for the tax, purchasing, patent, and liability provisions. A company is eligible for certification for the tax and patent provisions if it seeks to develop a research tool that will make it possible to quickly develop a countermeasure to a previously unknown agent or toxin, or an agent or toxin not targeted for research; three, Capital Formation for Countermeasures Research: The legislation provides that a company seeking to fund research is eligible to elect from among three tax incentives. The three alternatives are as follows: a. The company is eligible to establish an R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners; b. The company is eligible to issue a special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock; and, c. The company is eligible to receive refunds for Net Operating Losses, NOLs, to fund the research.

These tax incentives are available only to biotechnology companies with less than $750,000 in paid-in capital.

A company must elect only one of these incentives and, if it elects one of these incentives, it is then not eligible to receive benefits under the Orphan Drug Act. The legislation includes amendments to the Orphan Drug Act championed by Senators HATCH, KENNEDY and JEFFORDS, S. 1341. The amendments make the Credit available from the date of the application for Orphan Drug status, not the date the application is approved as provided under current law; four, Countermeasure Purchase Fund: The legislation provides that a company that successfully develops a countermeasure, through FDA approval, is eligible to sell the product to the Federal Government at a pre-established

price and in a pre-determined amount. The company is given notice of the terms of the sale before it commences the research. Sales to this fund may be made by any company irrespective of its paid-in capital; five, Intellectual Property Incentives: The legislation provides that a company that successfully develops a countermeasure is eligible to elect one of two patent incentives. The two alternatives are as follows: a. The company is eligible to receive a patent for its invention with a term as long as the term of the patent when it was issued by the Patent and Trademark Office, without any erosion due to delays in the FDA approval process. This alternative is available to any company that successfully develops a countermeasure irrespective of its paid-in capital; b. The company is eligible to extend the term of any patent owned by the company for two years. The patent may not be one that is acquired by the company from a third party. This is included as a capital formation incentive for small biotechnology companies with less than $750,000 in paid-in capital.

Six, Liability Protections: The legislation provides for protections against liability for the company that successfully develops a countermeasure. This option is available to any company that successfully develops a countermeasure irrespective of its paid-in capital; and seven, Strengthening of Biomedical Research Infrastructure: Authorizes appropriations for grants to construct specialized biosafety containment facilities where biological agents can be handled safely without exposing researchers and the public to danger. Also reauthorizes a successful NIH-industry partnership challenge grants to promote joint ventures between NIH and its grantees and for-profit biotechnology, pharmaceutical and medical device industries with regard to the development of countermeasures and research tools.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 186—TO AUTHORIZE REPRESENTATION OF SENATOR LOTT IN THE CASE OF LEE V. LOTT

Mr. DASCHLE submitted the following resolution; which was considered and agreed to:

S. RES. 186

Whereas, in the case of Lee v. Lott, Case No. 01–CV–792, pending in the United States District Court for the Southern District of Mississippi, the plaintiff has named Senator Trent Lott as the sole defendant; and

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent Senator Lott in the case of Lee v. Lott.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, December 4, 2001, at 9:30 a.m., in open session to consider the nomination of Claude M. Bolton, Jr. to be Assistant Secretary of the Army for Acquisition, Logistics, and Technology and, following the open session, to meet in executive session to consider certain pending nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, December 4, 2001, at 9:30 a.m. to conduct a hearing on the remediation process of biologically contaminated buildings. Specifically, the Committee is interested in the challenges of, and technologies available for, remediating buildings contaminated by biological contaminants. The hearing will be held in the Rm. SD–406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, December 4, 2001, at 2:15 p.m. to hold a nomination hearing.

Agenda

Nominees: Adolfo Franco, of Virginia, to be an Assistant Administrator (Latin America and the Caribbean) of the United States Agency for International Development; Frederick Schieck, of Virginia, to be Deputy Administrator of the United States Agency for International Development; and Roger Winter, of Maryland, to be an Assistant Administrator (Democracy, Conflict, and Humanitarian Assistance) of the United States Agency for International Development.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, December 4, 2001, at 4:30 p.m. to hold a nomination hearing.

Agenda

Nominees: William R. Brownfield, of Texas, to be Ambassador to the Republic of Chile; and Charles S. Shapiro, of Georgia, to be Ambassador to the Bolivarian Republic of Venezuela.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Department of Justice Oversight: Preserving Our Freedoms While Defending Against Terrorism,'' Tuesday, December 4, 2001, at 10 a.m. in Dirksen Room 226.

Tentative Witness List

Panel I: The Honorable Pierre-Richard Prosper, Ambassador-at-Large for War Crimes Issues, Department of State, Washington, DC.

Panel II: George J. Terwilliger III, Partner, White and Case, former Deputy Attorney General, Washington, DC; Professor Laurence H. Tribe, Harvard Law School, Cambridge, MA; Major General Michael J. Nardotti, Jr., Partner, Patton Boggs LLP, former Army Judge Advocate General, Washington, DC; Professor Cass R. Sunstein, University of Chicago Law School, Chicago, IL; and Timothy Lynch, Esq., Director, Project on Criminal Justice, Cato Institute, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Department of Justice Oversight: Preserving Our Freedoms While Defending Against Terrorism,'' Tuesday, December 4, 2001, at 2 p.m. in Dirksen Room 226.

Witness List

Panel I: Viet D. Dinh, Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice.

Panel II: Ali Al-Maqtari, New Haven, CT; Michael J. Boyle, Esq., Law Offices of Michael J. Boyle, North Haven CT; Steven Emerson, The Investigative Project, Washington, DC; Gerald H. Goldstein, Esq., Goldstein, Goldstein & Hilley, San Antonio, TX; Nadine Strossen, President, American Civil Liberties Union, Professor, New York Law School, New York, NY; and Victoria Toensing, Esq., DiGenova & Toensing, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, John Stewart and Scott Donelly are interns in the office of the Finance Committee chairman, Senator BAUCUS. I ask unanimous consent that the privilege of the floor be granted to them today during the pendency of the Railroad Retirement Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 10

Mr. REID. Mr. President, I ask unanimous consent that at 9:30 a.m. tomorrow Senator NICKLES be recognized to raise a point of order against the pending substitute with Senator BAUCUS then immediately to be recognized to make a motion to waive. Further, I ask unanimous consent that there then be 30 minutes equally divided between Senators BAUCUS and NICKLES or their designees. I also ask unanimous consent that following the debate time the Senate proceed to a vote on the motion to waive, and if the motion to waive is

agreed to then the substitute amendment be agreed to, the bill be read the third time, and the Senate then proceed to a vote on passage of H.R. 10, with the cloture vote having been vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZING LEGAL REPRESENTATION

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 186, submitted earlier today by the majority leader.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 186) to authorize representation of Senator LOTT in the case of Lee v. Lott.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Mr. President, this resolution concerns a civil action commenced in the United States District Court for the Southern District of Mississippi. The lawsuit, filed by a prolife, pro se plaintiff, names Senator LOTT as the sole defendant. The plaintiff has filed a number of prior lawsuits against other public officials, which have been dismissed by several courts.

In this action, the plaintiff calls upon Senator LOTT to commence impeachment proceedings against the United States Supreme Court for its ruling in Bush v. Gore. The plaintiff contends that because the Supreme Court's decision in that case was unlawful, all actions taken by President George Bush are unconstitutional, including one allegedly denying him disability benefits. This resolution authorizes the Senate Legal Counsel to represent Senator LOTT in this suit to move for its dismissal. Of course, under the Constitution, it is the House of Representatives, not the Senate, that initiates impeachment proceedings and the judgment of neither House in impeachment matters is the subject of judicial review.

Mr. REID. I ask unanimous consent the resolution and its preamble be agreed to en bloc, the motion to reconsider be laid on the table, and that statements by the majority leader be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 186) was agreed to.

The preamble were agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

MEASURE READ THE FIRST TIME—S. 1765

Mr. REID. I send a bill to the desk regarding bioterrorism preparedness and ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1765) to improve the ability of the United States to prepare for and respond to a biological threat or attack.

Mr. FRIST. Mr. President, I rise today on behalf of myself, Senator KENNEDY, and dozens of our colleagues on both sides of the aisle to support critical legislation that will help our Nation better prepare to defend against potential bioterrorist attacks.

The Bioterrorism Preparedness Act of 2001 was first introduced on November 15. Today, we are reintroducing this bill so that it may be placed directly on the calendar and available for consideration by the full Senate.

As my colleagues will note, the Bioterrorism Preparedness Act enjoys broad bipartisan support. We are re-introducing the legislation today with 71 cosponsors—33 Republicans and 38 Democrats. In addition, in the two weeks since the legislation was first introduced, we have gained the support of over two dozen organizations, including the American Medical Association, the Biotechnology Industry Organization, the American Academy of Family Physicians, the American Public Health Association, the Association of Minority Health Professions Schools, and the National Association of Children's Hospitals & Related Institutions. The list of supporters is growing every day.

In light of this overwhelming support and the short time remaining this session of Congress, we are moving the bill directly onto the Senate calendar so that it will be available for us to consider as soon as possible.

In the wake of the attacks at the Pentagon and World Trade Center on September 11 and subsequent bioterrorist attacks, we know that bioterrorism is a significant and growing threat. I believe we must take steps this year to strengthen our capabilities to prepare for and respond to potential attacks.

Three years ago, as Chair of the Senate Public Health Subcommittee, I began a series of hearings to study indepth the ability of our nation's public health infrastructure—at the local, state, and national level—to respond to public health threats and emergencies, including bioterrorism. Those hearings culminated in the passage of legislation last year—the Public Health Threats and Emergencies Act of 2000—intended to enhance coordination and improve resources for our public health system, principally at the state and local levels. But that authorizing legislation has never fully been funded, and it is now clear that more resources are needed to immediately strengthen our response capabilities.

That is why I feel so strongly that we must pass the Bioterrorism Preparedness Act of 2001. The legislation will address gaps in our Nation's defenses by expanding the capabilities of local, state, and federal government to respond to bioterrorist attacks, improving coordination among those responsible for responding to bioterrorist threats, speeding the development of vaccines and other countermeasures, and safeguarding the Nation's food supply and agriculture.

In closing, I want to thank my colleagues who have worked so hard to develop this legislation. In particular, I would like to single out Senator ROBERTS, Senator DASCHLE, and Senator HUTCHISON for their work on the agricultural provisions; Senators GREGG and HUTCHINSON for their contributions on the drug and vaccine development components; and Senator COLLINS for her input on the food safety provisions. Of course, I would also like to acknowledge my chief Democratic cosponsor, Senator KENNEDY. I encourage my colleagues who have not yet cosponsored this legislation to do so. And I encourage the leadership of the Senate to work with Senator KENNEDY and myself to find time in the days remaining so that this important legislation can be passed.

I yield the floor.

Mr. REID. Mr. President, I ask for the second reading and object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will receive its second reading on the next legislative day.

ORDERS FOR WEDNESDAY, DECEMBER 5, 2001

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m., Wednesday, December 5; that immediately following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 10; further, that upon disposition of H.R. 10, there be 1 hour of debate equally divided between the two leaders or their designees prior to the vote on cloture on the motion to proceed to S. 1731, with the live quorum being waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:35 p.m., adjourned until Wednesday, December 5, 2001, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate December 4, 2001:

DEPARTMENT OF COMMERCE

JAMES R. MAHONEY, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE, VICE ELWOOD HOLSTEIN, JR.

DEPARTMENT OF STATE

GRANT S. GREEN, JR., OF VIRGINIA, TO BE DEPUTY SECRETARY OF STATE FOR MANAGEMENT AND RESOURCES. (NEW POSITION)

OVERSEAS PRIVATE INVESTMENT CORPORATION

SAMUEL E. EBBESEN, OF THE VIRGIN ISLANDS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2003, VICE GEORGE DARDEN.

DISTRICT OF COLUMBIA OFFENDER SUPERVISION, DEFENDER, AND COURTS SERVICES AGENCY

PAUL A. QUANDER, JR., OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE DISTRICT OF COLUMBIA OFFENDER SUPERVISION, DEFENDER, AND COURTS SERVICES AGENCY FOR A TERM OF SIX YEARS. (NEW POSITION)